2268

SUPREME COURT OF THE UNITED STATES.

No. 127.

EDWARD H. CASTLE, ELIHU GRANGER AND J. P. PHILLIPS, SURVIVORS OF JOSEPH FILKINS, DEC'D, PLAINTIFFS IN ERROR,

vs.

EDWARD F. BULLARD.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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UNITED STATES OF AMERICA,
Northern district of Illinois, ss.

Pleas in the circuit court of the United States of America, for the northern district of Illinois, held at the city of Chicago, in said northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court of the United States for said northern district of Illinois, and (in the absence pro tempore of the Hon. John McLean, one of the justices of the Supreme Court of the United States of America) sole judge of said circuit court, on Tuesday, the first day of December, as yet of the October adjourned term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second year.

EDWARD F. BULLARD
vs.
J. P. PHILLIPS, ELIHU GRANGER, and EDWARD H. CASTLE, survivors of Joseph Filkins. } Case.

Be it remembered, that heretofore, to wit, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and fifty-six, come the said Edward F. Bullard, plaintiff in this suit, by Messrs. Farnsworth and Burgess, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, his præcipe, praying the issue of a writ of summons against the said Joseph Filkins, J. P. Phillips, Elihu Granger, and Edward H. Castle, partners, &c., original defendants in this suit, in an action on the case—damages five thousand dollars—returnable to the July term of said court; also at the same time filed his bond for costs in said entitled cause, which said bond for costs is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Illinois, ss.

Circuit Court, July Special Term, A. D. 1856.

Know all men by these presents, that , of the county of Cook, and northern district of Illinois, am held and firmly bound unto Joseph Filkins, J. P. Phillips, Elihu Granger and Edward H. Castle, or to the officers of the circuit court of the United States for the northern district of Illinois, in the sum of five hundred dollars, to be paid to said Filkins, Phillips, Castle & Granger, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office. To which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal the 24th day of June, in the year of our Lord one thousand eight hundred and fifty-six.

The condition of the above obligation is such, that whereas Edward F. Bullard has this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the northern district of Illinois, against said Filkins, Phillips, Castle & Granger: Now if the said Edward F. Bullard, his heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in behalf, if judgment shall pass against the said defendants, and the costs fail to be collected of said Bullard, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation to be void, otherwise of full force and effect.

JOHN C. MILLER. [SEAL.]

Endorsed: Filed this 25th day of June, A. D. 1856.

W. H. BRADLEY, *Clerk.*

Whereupon, a writ of summons was issued by the clerk of said court against the said defendants as prayed for, directed to the marshal of the northern district of Illinois, to execute, and was returned by the marshal on the seventh day of July, in the year last aforesaid, executed upon the said defendants, which said writ of summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Circuit Court of the United States of America, northern district of Illinois.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon Joseph Filkins, J. P. Phillips, Elihu Granger and Edward H. Castle, partners under firm name of Filkins, Phillips & Co., if they shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto Edward F. Bullard, in an action on the case to his damage, as he alleges, of five thousand dollars; and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this 25th day of June, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the 80th year. [SEAL.]

WM. H. BRADLEY, *Clerk.*

Executed the within summons on the 27th day of June, 1856, by reading the same to the within named Joseph Filkins, J. P. Phillips, Elihu Granger and Edw. H. Castle. Dated June 27th, 1856.

HARRY WILTON, *U. S. Marshal.*
By E. M. FRY, *Deputy.*

Endorsed: Filed July 7th, 1856.

BRADLEY, *Clerk.*

And on the said seventh day of July, in the year last aforesaid, came again the said plaintiff by his said attorneys, and filed in said circuit court his certain declaration against the said defendants, in the plea aforesaid, which said declaration is in the words and figures following, to wit:

In the Circuit Court of the United States for the northern district of Illinois, of July special term, A. D. 1856.

NORTHERN DISTRICT OF ILLINOIS, *ss.*

Edward F. Bullard, who is a citizen of the State of New York, plaintiff in this suit, by Farnsworth and Burgess, his attorneys, comes and complains of Joseph Filkins, J. P. Phillips, Elihu Granger, and Edward H. Castle, partners under the firm name of "Filkins, Phillips & Co.," who are citizens of the State of Illinois, defendants, who were summoned, &c., to answer unto said plaintiff in a plea of tresspass on the case. For that whereas the said plaintiff, before and at the time of the committing of the grievances by the said defendants as hereinafter next mentioned, was the owner of a certain large quantity of goods, wares, and merchandise of great value, to wit, of the value of four thousand dollars, to wit, at Chicago, in the county aforesaid; and whereas, also, the said defendants then and there were auctioneers and commission merchants, and, as such, were carrying on the business of auctioneers and commission merchants in partnership together; and the said defendants so being such auctioneers and commission merchants as aforesaid, the said plaintiff intrusted them with the sale of the said goods and chattels for a certain reasonable reward and commission, to be paid by the said plaintiff to them in that behalf; and the said defendants so being such auctioneers and commission merchants, and so having said goods of said plaintiff in their possession and control, to sell and dispose of for said plaintiff, fraudulently, knowingly, and deceitfully, for and on behalf of said plaintiff, sold and disposed of the same to one Edmond S. Castle, on credit, they, said defendants, then and there well knowing the premises, and that the said Edmond S. Castle was then and there in bad and insolvent circumstances, and unfit to be trusted with goods on credit; and the said plaintiff further says, that the said sum of money for which said goods were so sold to said Edmond S. Castle is still

wholly due and unpaid to the said plaintiff, and he is likely to lose the same, to wit, at Chicago aforesaid, and he was then and there ignorant of the fact that said Edmond S. Castle was in bad and insolvent circumstances, and unworthy of credit.

And for that whereas also the said plaintiff, before and at the time of the committing of the grievance by the said defendants as hereinafter next mentioned, was the owner of a certain large quantity of goods, wares and merchandise of great value, to wit, of the value of four thousand dollars, to wit, at Chicago, in the county aforesaid; and whereas also the said defendants then and there were auctioneers and commission merchants, and as such were then and there carrying on the business of auctioneers and commission merchants together as partners therein; and the said defendants so being such auctioneers and commission merchants, the said plaintiff, at their special instance and request, intrusted them with and committed to their charge the sale and disposal of said goods, wares and merchandise, for a certain reasonable reward and commission to be by the said plaintiff paid to them in that behalf therefor; and it then and there became and was the duty of said defendants to sell and dispose of said goods, wares and merchandise for said plaintiff, if sold upon credit, to person or persons in good and solvent circumstances, and worthy of credit; yet the said defendants well knowing the premises, and that Edmond S. Castle then and there was in bad and insolvent circumstances, and unworthy to be trusted with goods on credit, to wit, on the day of A. D. 1855, at Chicago aforesaid, contriving and fraudulently intending to injure and deceive the said plaintiff in this behalf, falsely, fraudulently and deceitfully informed the said plaintiff, in answer to certain questions then and there put to the said defendants by the said plaintiff, respecting the character and circumstances of the said Edmond S. Castle, that they, said defendants, knew the said Edmond S. Castle, and that he was worth at least from eight thousand dollars to ten thousand dollars clear above all liabilities; that he was not owing debts scarcely to any amount; that he was not embarrassed by any old debts; that he had about two thousand dollars' worth of goods in his store in Chicago, and about six thousand dollars in his store at Dubuque; that he was making at least 40 per cent. profits on his business; that he was not in any speculation or risky business; that he was a very safe, cautious, business man, and every way worthy of credit; that he was one of the safest and most reliable men in Chicago, (thereby then and there meaning that the said defendants believed the said Edmond S. Catsle to be a man in good circumstances, and fit to be trusted with said goods on credit.) By means and in consequence of such information, so given by the said defendants to the said plaintiff as aforesaid, the said plaintiff not knowing the contrary, but believing therefrom that the said Edmond S. Castle was a

man in good circumstances, and fit to be trusted as aforesaid, afterwards, to wit, on the day and year and at the place last aforesaid, consented to the negotiation by the said defendants, as such auction and commission merchants as aforesaid, of a sale of said goods, wares and merchandise to the said Edmond S. Castle, upon credit, and was induced to give credit to the said Edmond S. Castle, and did then and there, through and by means of the said defendants, as such auctioneers and commission merchants as aforesaid, sell and deliver to him the said goods, wares and merchandise, on credit, of great value, to wit, of the value of four thousand dollars; whereas, in truth and in fact, at the time of the said defendants negotiating said sale of said goods, wares and merchandise with said Edmond S. Castle, for said plaintiff, and so making and giving the said representations and affirmations to the said plaintiff as aforesaid, the said Edmond S. Castle was in bad and insolvent circumstances, and not fit to be trusted with goods on credit; and whereas, in truth and in fact, he was not worth from eight thousand to ten thousand dollars clear above all his liabilities, and was owing debts to a large amount, and was embarrassed by old debts, and had not two thousand dollars' worth of goods in his store in Chicago, or elsewhere there, and had not six thousand dollars' worth in his store in Dubuque, or elsewhere there, and was not a safe, cautious business man, and was not making forty per cent. profit on his business, was in a speculative and risky business, and was not in any manner worthy of credit; and whereas, in truth and in fact, the said defendants then and there well knew the said Edmond S. Castle was in bad and insolvent circumstances, and not fit to be trusted with goods on credit.

And the said plaintiff further says that the said sum of money is still wholly due and unpaid to the said plaintiff, and he is likely wholly to lose the same, to wit, at Chicago aforesaid.

By means of which said several premises, the said plaintiff says he hath sustained damage to five thousand dollars, and therefore this suit, &c.

FARNSWORTH & BURGESS,
For Pl'ff.

Endorsed: Filed July 7th, 1856.

WM. H. BRADLEY, *Cl'k.*

And on the same day, to wit, the 7th day of July, in the year last aforesaid, at the July term, A. D. 1856, of said court, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

On motion of the plaintiff, by his attorney, leave is granted him by the court to amend his declaration.

And afterwards, to wit, on the twelfth day of July, in the year last aforesaid, came again the said plaintiff by his said attorney, and filed in said court his additional counts to his declaration heretofore filed herein, which said additional counts are in the words and figures following, to wit:

In the Circuit Court of the United States for the northern district of Illinois.

EDWARD F. BULLARD
vs.
CASTLE, GRANGER, FILKINS et al. } Case.

Additional Counts.

And also for that whereas the said plaintiff, before and at the time of the committing of the grievance by the said defendants, as next hereinafter mentioned, was the owner of a large quantity of goods, wares and merchandise of great value, to wit, of the value of four thousand dollars, to wit, at Chicago, in the district aforesaid; and whereas, also, the said defendants then and there were commission merchants, and as such, sold goods of other parties for them on commission, and the said plaintiff so being the owner of said goods, and the said defendants so being such commission merchants, heretofore, to wit, on the 8th day of November, 1855, at the place aforesaid, the said plaintiff, at the special instanoe and request of said defendants, employed and retained them as such commission merchants as aforesaid, to effect and negotiate a sale of said goods for them on credit, for a certain reasonable reward and commission, to be by the said plaintiff paid to them in that behalf therefor; and the said defendants having accepted of said employment and retainer, it thereupon then and there became, and was the duty of said defendants, in case they effected a sale of said goods on credit for said plaintiff, to sell the same to some person or persons in good and solvent circumstances, and worthy of being trusted with goods on credit, or reputed and believed by them to be so; and whereas, also, the said defendants afterwards, to wit, on the day and year and at the place last aforesaid, as such commission merchants as aforesaid, negotiated a sale of said goods to one Edmond S. Castle, they then and there well knowing the said Castle to be wholly insolvent and unfit to be trusted with goods on credit, falsely, fraudulently and deceitfully concealed and withheld from said plaintiff all knowledge of such insolvency, and then and there falsely, fraudulently, and with the intent to deceive and defraud the said plaintiff, induced the said plaintiff to deliver said goods to said Edmond S. Castle, upon the said sale upon credit, the said plaintiff then and there not knowing to the contrary but that the said Edmond S. Castle was solvent and fit to be trusted with goods on credit; and trusting in and relying upon said defend-

ants, that they had sold the said goods to a person either solvent and fit to be trusted with goods on credit, or reputed and believed by them to be so, and the said plaintiff then and there paid the said defendants a large sum of money, to wit, the sum of one hundred and twenty-five dollars, for their commissions for effecting said sale of said goods. By means whereof the said sum of money for which said goods were sold to said Castle, to wit, the sum of four thousand dollars, being and remaining wholly unpaid, the said plaintiff is likely wholly to lose the same, to wit, at Chicago aforesaid. And also for that whereas the said plaintiff, before and at the time of the committing of the grievance by the said defendants as next hereinafter mentioned, was the owner of a large quantity of goods, wares and merchandise of great value, to wit, of the value of four thousand dollars, to wit, at Chicago, in the district aforesaid; and whereas, also, the said defendants then and there were auctioneers and commission merchants, engaged therein as partners, and as such, received goods and chattels to sell on commission, and the said plaintiff so being the owner of said goods, wares and merchandise, and the said defendants so being such auctioneers and commission merchants as aforesaid, heretofore, to wit, on 8th day of November, A. D. 1855, at Chicago aforesaid, the said plaintiff, at the special instance and request of said defendants, delivered to them the said goods, wares and merchandise, and they then and there received the same from the said plaintiff, to be by them as such commission merchants as aforesaid sold and disposed of by them for said plaintiff, for a certain reasonable reward and commission, to be by said plaintiff paid to them therefor; and it thereupon then and there became, and was the duty of said defendants, in case they sold and disposed of said *said* goods on credit for said plaintiff, to sell the same to some person or persons in good and solvent circumstances, and worthy of being trusted with goods on credit, or reputed and believed by them to be so; and whereas also, before the committing of the grievance by said defendants, as herein next mentioned, to wit, afterwards on the day and year and at the place last aforesaid, the said defendants, as such commission merchants, as aforesaid, entered into a treaty and negotiation with one Edmond S. Castle for the sale of the said goods, wares, and merchandise of said plaintiff, to him, said Edmond S. Castle, on credit, and on that occasion informed the said plaintiff that they, as such commission merchants, were about to sell said goods and merchandise to said Edmond S. Castle, for him, under the commission in that behalf herein above set out, and the said plaintiff being then and there unacquainted with the character and circumstances of the said Edmond S. Castle, then and there requested of said defendants information respecting the same, whereof they, said defendants, before any sale to said Edmond S. Castle of said goods, had notice, to wit, on the day and year and

at the place last aforesaid, and the said defendants being then and there interrogated by the said plaintiff respecting the character and circumstances of the said Edmond S. Castle; nevertheless, the said defendants well knowing the premises, and that the said Edmond S. Castle was then and there in bad and insolvent circumstances and unfit to be trusted with goods on credit, but contriving and fraudulently intending craftily and subtily to deceive and injure the said plaintiffs in this behalf on the day and year and at the place last aforesaid, falsely, fraudulently, and deceitfully informed the said plaintiff, in answer to certain questions then and there put to the said defendants by said plaintiff, respecting the character and circumstances of the said Edmond S. Castle, was worth at least eight thousand dollars clear, above all liabilities; that he was not owing debts scarcely to any amount; that he was not embarrassed by any old debts; that he was a very safe, cautious, business man, and every way worthy of credit, (thereby then and there meaning that the said defendants believed the said Edmond S. Castle to be a man in good and solvent circumstances, and fit to be trusted with goods on credit.) By means and in consequence of which information, so given by the said defendants to said plaintiff, as aforesaid, the said plaintiff not knowing to the contrary, but believing therefrom that the said Edmond S. Castle was a man in good circumstances, solvent, and fit to be trusted, as aforesaid, afterwards, to wit, on the day and year and at the place aforesaid, was induced to consent that the said defendants might, as such commission merchants, as aforesaid, negotiate a sale of said goods, wares, and merchandise to the said Edmond S. Castle; and the said defendants did then and there, as commission merchants, for and on behalf of said plaintiff, sell to said Edmond S. Castle said goods, wares, and merchandise on credit, and the said plaintiff, trusting in and relying upon the representations of the said defendants touching the character and solvency of said Edmond S. Castle, so made, as aforesaid, and not knowing to the contrary, did afterwards, to wit, on the day and year and at the place aforesaid, in pursuance of such sale so made by the said defendants, as aforesaid, deliver to the said Edmond S. Castle said goods, wares and merchandise, and did then and there pay said defendants a large sum of money, to wit, the sum of one hundred and twenty-five dollars, or their commissions in the premises, whereas in truth and in fact the said Edmond S. Castle, at the time of said defendants so giving the said information to said plaintiff, as aforesaid, and at the time of their negotiating said sale to the said Edmond S. Castle, as aforesaid, and at the delivery of said goods to him, as aforesaid, was in bad and insolvent circumstances, and not fit to be trusted with goods on credit; and whereas, in truth and in fact, the said Edmond S. Castle was not worth eight thousand dollars clear above all liabilities, and in fact was not worth anything; that he

was owing debts to a large amount, was embarrassed by old debts, was not a safe, cautious, business man, and was not in any manner worthy of credit, and all which was well known to the said defendants, and they then and there well knew the said Edmond S. Castle to be in bad and insolvent circumstances, and not fit to be trusted with goods on credit; and the said plaintiff further says that the said goods, wares and merchandise, so then and there sold on credit to the said Castle, as aforesaid, amounted to a large sum of money, to wit, the sum of four thousand dollars, and the same still remain wholly due and unpaid, and the said plaintiff is likely to lose the same wholly, to wit, at Chicago, aforesaid.

And also for that whereas the said plaintiff, before and at the time of the committing of the grievance by the said defendants, as next hereinafter mentioned, was the owner of a large quantity of goods, wares, and merchandise, of great value, to wit, of the value of four thousand dollars, to wit, at Chicago, in the district aforesaid; and whereas, also, the said defendants then and there were auctioneers and commission merchants, engaged therein as partners, and, as such, received, among other things, goods and chattels to sell on commission; and the said plaintiff, so being the owner of said goods, and said defendants, so being such commission merchants, as aforesaid, heretofore, to wit, on the 8th day of November, A. D. 1855, at Chicago aforesaid, at the special instance and request of the said defendants, said plaintiff delivered to them the said goods, and they then and there received the same from said plaintiff, to be by them, as such commission merchants, sold and disposed of on credit for said plaintiff, for a certain reasonable reward and commission to be by said plaintiff paid to them therefor; and it thereupon then and there became and was the duty of said defendants, in case they sold and disposed of said goods on credit for said plaintiff, to sell the same to some person or persons in good and solvent circumstances, and worthy of being trusted with goods on credit, or so reputed and believed by them to be. And whereas, also, the said defendants, after they had accepted of said goods, and agreed to sell them upon commission, as aforesaid, to wit, on the day and year and at the place last aforesaid, fraudulently, falsely, and deceitfully made and negotiated a sale thereof on credit to one Edmond S. Castle, and induced the said plaintiff to deliver the said goods to him, falsely, knowingly, and deceitfully representing him to said plaintiff to be worthy of credit, the said plaintiff then and there not knowing to the contrary, and believing him, from said representations of said defendants, to be solvent and fit to be trusted with goods on credit, and trusting in and relying upon the said defendants that they would sell said goods to such person as was solvent and fit to be trusted with goods on credit, and reputed and believed by them to be such, and in

pursuance of the sale thereof, so effected by said defendants, as auction and commission merchants as aforesaid, deliver said goods to said Edmond S. Castle; whereas, in truth and in fact, the said Edmond S. Castle was then and there wholly insolvent and unworthy of credit, and not fit to be trusted with goods on credit, and the said defendants, at the time of negotiating and effecting said sale to him, and of the delivery of said goods to said Edmond, well knew such to be the case, and fraudulently and deceitfully concealed the same from said plaintiff; and the said plaintiff avers that he then and there paid said defendants a large sum of money, to wit, the sum of one hundred and twenty-five dollars, as and for their commissions upon said sale, and that said goods, so sold, amounted in value to four thousand dollars, and the same still remain wholly unpaid and due, and the said plaintiff is likely wholly to lose the same, to wit, at Chicago aforesaid.

FARNSWORTH & BURGESS,
For Pl'ff.

Endorsed: Filed July 12th, 1856.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 25th day of July, in the year last aforesaid, at the said July term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER, and EDWARD H. CASTLE. } Case.

On motion of the plaintiff, by his attorney, it is ordered by the court that the defendants be ruled to plead herein by Monday morning next.

And afterwards, to wit, on the twenty-ninth day of July, in the year last aforesaid, came the said Joseph Filkins, J. P. Phillips, Elihu Granger, and Edward H. Castle, by T. L. Dickey, esq., their attorney, and filed in said court their certain plea in said entitled cause, which said plea is in the words and figures following, to wit:

United States of America, in the Circuit Court thereof, in and for the northern district of the State of Illinois.

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELISHA GRANGER, and EDWARD H. CASTLE. } Case.

And now comes the said defendants, and defends the wrong and injury, when, &c., and says that they are not guilty of the said several grievances in manner and form as the said plaintiff hath

in his declaration charged them in that behalf, and of this they put themselves upon the country, &c.

T. L. DICKEY,
For Def'ts.

And afterwards, to wit, on the sixth day of November, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER, and EDWARD H. CASTLE. } Case.

On application of the defendants, by their attorney, on affidavit filed, it is ordered by the court that this cause be continued to the next term, at the costs of the defendants, and that execution issue therefor.

And afterwards, to wit, on the third day of November, in the year of our Lord one thousand eight hundred and fifty-seven, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now at this day come the parties, by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit: E. R. Holland, E. P. Clark, C. Benjamin Smith, Asa Munn, E. A. Bennett, E. F. Halloway, N. C. Perkins, D. E. Milner, V. G. Harbaugh, Samuel C. Roberts, J. P. Colburn and J. R. Hoag, who were duly elected, tried and sworn, and after the opening statements of counsel for the respective parties, the hour of adjournment having arrived, the trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, on the fourth day of November, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now come again the parties, by their attorneys, and now come again the jury heretofore empanelled in this cause, and after proceeding in the trial of the cause until the hour of adjournment

without concluding the same, the further trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, the fifth day of November, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanelled in this cause, and after progressing with the trial until the hour of adjournment without concluding the same, the further trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, on the sixth day of November, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now come again the parties, by their attorneys, and now come again also the jury heretofore empanelled in this cause, and after hearing the conclusion of the evidence and the opening arguments of the counsel, the hour of adjournment having arrived, the concluding arguments of counsel are postponed until to-morrow morning.

And on the next day, to wit, on the seventh day of November, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanelled in this cause, and after hearing the concluding arguments of counsel and receiving instructions from the court, the jury retired to consider of their verdict, and after an absence of several hours, the jury returned into court with the following verdict, to wit: We, the jury, find the defendants guilty, and we assess the plaintiff's damages at the sum of two thousand nine hundred and eighty-three dollars and thirty-two cents.

And the defendants, by their attorney, move the court for a new trial.

And afterwards, to wit, on the first day of December, in the year last aforesaid, came the said defendants and filed in said circuit court his "points for a new trial" in said entitled cause, which is in the words and figures following, to wit:

Circuit Court of the U. S.

E. F. BULLARD
vs.
E. H. CASTLE, J. FILKINS, E. GRANGER and J. P. PHILLIPS.

The points for new trial:

1st. The verdict is not warranted by the proof.
2d. The verdict is against the weight of the evidence.
3d. The court admitted improper evidence to go to the jury.
4th. The court excluded competent evidence offered by def't.
5th. The court misdirected the jury.

T. L. DICKEY,
For Def'ts.

Endorsed: Filed Dec. 1st, 1857.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the first day of December, in the year last aforesaid, as yet of the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

EDWARD F. BULLARD
vs.
JOSEPH FILKINS, J. P. PHILLIPS, ELIHU GRANGER and EDWARD H. CASTLE. } Case.

Now came on to be heard the motion of the defendants heretofore made by their attorney for a new trial of this cause, which after argument by counsel, is overruled by the court, and the defendants' counsel now suggests the death of the defendant Joseph Filkins, and, on motion of the plaintiff by his attorney, for judgment upon the verdict of the jury heretofore found and returned.

It is thereupon considered and adjudged by the court, that the plaintiff have and recover of the said defendants, J. P. Phillips, Elihu Granger and Edward H. Castle, surviving defendants, the said sum of two thousand nine hundred and eighty-three dollars and thirty-two cents, his damages so as aforesaid assessed by the jury, together with his costs by him about his suit in this behalf expended, amounting to the sum of two hundred fifty-seven dollars and seventy-two cents, and that he have execution therefor.

And afterwards, to wit, on the eighth day of December, in the year last aforesaid, the following writ of error was issued out of

the clerk's office of said court in the above entitled cause, which said writ of error is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Illinois, ss.

The United States of America, to the Judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Edward F. Bullard and against J. P. Phillips, Elihu Granger, and Edward H. Castle, survivors of Joseph Filkins, deceased, manifest error hath happened, to the great damage of the said J. P. Phillips, Elihu Granger, and Edward H. Castle, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this eighth day of December, in the year of our Lord one thousand eight [SEAL.] hundred and fifty-seven, and of our independence the eighty-second year.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the tenth day of December, in the year last aforesaid, the defendants filed in the clerk's office of said court their appeal bond, which said appeal bond is in the words and figures following, to wit:

Know all men by these presents, that we, Edward H. Castle and Elihu Granger, as principals, and Philip Dean and Jacob Rehm, as securities, are held and firmly bound unto Edward F. Bullard in the penal sum of five thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Executed this 8th day of December, A. D. 1857.

The condition of this bond is such, that whereas said Edward F. Bullard, by the consideration of the circuit court of the United States in and for the northern district of Illinois, recovered judg-

ment on the 1st day of December instant for the sum of two thousand nine hundred and eighty-three dollars and thirty-two cents damages, and for costs, against the said Edward H. Castle and Elihu Granger, and one J. P. Phillips, as defendants; and whereas the said Edward H. Castle, Elihu Granger, and J. P. Phillips, have sued out a writ of error to the Supreme Court of the United States, with a view of having said judgment reversed, and the same is about to be made a supersedeas: Now, therefore, if the plaintiffs in said writ of error shall prosecute the same with effect, and pay to said Bullard all judgments and costs which have been or may be rendered against them in case the said judgment shall be affirmed, or said writ of error shall be dismissed, then this bond to be void, otherwise of force.

EDWARD H. CASTLE, [SEAL.]
ELIHU GRANGER, [SEAL.]
PHILIP DEAN, [SEAL.]
JACOB REHM. [SEAL.]

Endorsed: Filed Dec'r 10th, 1857.

WM. H. BRADLEY, *Cl'k.*

Approved.

THOMAS DRUMMOND.

In Circuit Court United States, northern district of Illinois.

Of the October adjourned term, A. D. 1857.

EDWARD F. BULLARD
vs.
EDWARD H. CASTLE, ELIHU GRANGER, and J. P. PHILLIPS, Survivors of Joseph Filkins. } In Case.

On the trial of the foregoing entitled cause in said circuit court the following exceptions were made and allowed, to wit:

Bill of Exceptions.

In the Circuit Court of the United States for the northern district of Illinois.

Of the October term, A. D. 1857.

EDWARD F. BULLARD
vs.
EDWARD H. CASTLE, JOSEPH FILKINS, ELIHU GRANGER, and J. P. PHILLIPS. } Case.

Be it remembered, that on the trial of this cause the plaintiff produced as a witness Warren Boyington, who was sworn, and testified in substance, that witness had been well acquainted with plaintiff in the State of New York, and that in the fall of 1855 he met plaintiff in Rockford, in Illinois, when it was proposed that

witness should take to sell a lot of clothing plaintiff said he had in the city of Chicago; that on the 7th November, 1855, witness and plaintiff came together from Rockford to Chicago to attend to it. That, on arriving at Chicago in the afternoon about *about* four or five o'clock, they started to go to the store of Castle & Co., 100 Randolph street; that before they got there they met defendant, E. H. Castle, in some street in Chicago, when something was said between Bullard and defendant, Castle, about some goods which plaintiff had sent to one Adams; said goods had been left at 100 Randolph street, (delivered to E. H. Castle,) to be left there until plaintiff should give directions what to do with them; plaintiff asked Castle if he had heard from some person (witness did not recollect the name) about something relating to the goods; Castle replied he had either seen him or written him. Castle then said to plaintiff he had better arrangements; that he could make a better sale of the goods to a purchaser that he said was a namesake of his, a cousin of his, one E. S. Castle, who was doing a first-rate business, some thirty thousand dollars a year, at 234 Lake street, Chicago, selling boots and shoes, and manufacturing trunks; that he was worth ten thousand dollars, comparatively free from debt; owed little or nothing; was a very safe, careful man; kept his business very close and correct. Plaintiff stated to Castle that he had proposed to let witness have the goods. Castle said he could dispose of that satisfactorly; that E. S. Castle was in want of a clerk, and he could negotiate, so that witness could have $50 a month till the next spring or six months, more or less; he said he would go and see E. S. Castle in regard to it. He left us shortly afterwards. We met again near their store; E. H. Castle then said he had seen E. S. Castle and made an arrangement to sell the goods to him at 6 and 9 or 12 months; not sure as to time—it was on a credit, and that he had made an arrangement for witness in E. S. Castle's store; he wanted just such a man. It was then arranged, witness thinks, upon the suggestion of Bullard, that plaintiff and witness should go and stay all night at E. H. Castle's house; they did stay there that night. Before going out to E. H. Castle's house witness and plaintiff went to the place of business of E. S. Castle; Bullard introduced the business; he introduced himself to E. S. Castle; E. S. Castle seemed to understand something about the matter; E. S. Castle said he wanted such a clerk; they had other conversation which witness could not recollect. The next morning they came to the store, 100 Randolph street, and looked over the goods to see if they were all there; there was there in the store a young man, a clerk, an Irish youth, and witness looked over the goods; plaintiff and E. H. Castle were in the back part of the store, fenced off by an open railing about 3 feet high for an office. The goods were on the shelves on the left-hand side as we went in. E. S. Castle came in and went back where the other

men were; a man by the name of Phillips, (as witness understood,) one of the firm, was also in the office; witness went back into the office where the men were; E. S. Castle inquired of plaintiff what was to be the arrangement, saying the captain, meaning E. H. Castle, had the most to do with it; Bullard told him what the arrangement was to be.

Witness thinks Bullard drew the notes. Here 2 notes were shown to witness by plaintiff in the words and figures following, to wit:

$1,387 $\frac{60}{100}$. CHICAGO, ILL., 8 *Nov.*, 1855.

Six months after date I promise to pay E. F. Bullard, or order, thirteen hundred and eighty-seven $\frac{60}{100}$ dollars, at R. K. Swift's bank.

(Signed) E. S. CASTLE.

$1,387 $\frac{60}{100}$. CHICAGO, ILL., 8 *Nov.*, 1855.

One year after date I promise to pay E. F. Bullard, or order, thirteen hundred and eighty-seven dollars, at R. K. Swift's bank.

(Signed) E. S. CASTLE.

Witness then stated that he saw E. S. Castle sign the notes, and that the notes were written by plaintiff; that he thought these were the same two notes; that they looked like the same notes; that the body of the notes are in Bullard's handwriting; that he recognised the signature as that of E. S. Castle, and that he thought he should not hesitate to say they were the same notes.

The notes were then read to the jury.

Witness then stated, that on examining and comparing the bill with the goods, some articles were missing—four coats; that he checked the bill; that there were some four or five boxes of goods. E. H. Castle charged five per cent. commission; something was said about freight—witness does not recollect what; plaintiff demurred to it—thought it was too much; plaintiff then drew a note for some $135; there was some dispute between E. H. Castle and E. S. Castle as to the time this note should run; E. H. Castle proposed forty-five days, and this was finally agreed upon. The note was signed by E. S. Castle. There were two notes written; one note was written in favor of E. H. Castle; he declined receiving such a note, saying it was a company matter, and that he would have to endorse it; that note was torn up, and another note was written by plaintiff to the order of the firm, from memory—witness thinks Phillips, Filkins and Granger. E. S. Castle signed this note, and it was delivered to E. H. Castle. Phillips was present at this time. Another paper was here shown to the witness by plaintiff in the words and figures following, to wit:

Box 3.

No. 31, only 4 coats instead of 6, at $8 80		17 60
32, " 4 " " 6, at $7 70		15 40
		33 00

The above 4 coats were missing when they arrived at Chicago to our care, and were opened.

(Signed) FILKINS, PHILLIPS & Co.

Witness stated, in relation to this paper, that plaintiff told Castle that he wanted something to show the loss of the coats to the Railroad Company, and that plaintiff then drew up this paper, and that E. H. Castle signed it as above, and gave it to plaintiff after the making of the notes above mentioned; that Phillips was in the office at the time when this paper was given.

[The plaintiff here requested the defendants to produce in pursuance of notice the note given by E. S. Castle, but no such note was produced by the defendants.]

Witness further stated, that E. S. Castle might have staid at the store some 15 or 20 minutes; that the goods were packed in boxes, and that the next he saw of the goods was in the store of E. S. Castle, the same day. The goods were immediately boxed up to be shipped to Dubuque, Iowa, and marked to E. S. Castle's son, and were sent off. The notes were all executed before dinner. During the transaction of the business E. H. Castle referred plaintiff to some firms in the city, as to E. S. Castle's responsibility. Plaintiff said he trusted to the honor of E. H. Castle as a friend; that those whom he would refer him to were strangers to him, (pl'ff,) and he wished him to do by him, plaintiff, as he would by a brother, and that he, plaintiff, had the utmost confidence in him.

Witness further testified, that he went to the store of E. S. Castle, in Lake street, as clerk, and staid there about too weeks; that he discovered that Smith Castle (E. S. Castle) was in a bad condition; that he knew of the hands asking for money, and some were not paid.

To the above testimony of the witness touching the facts as to the circumstances of E. S. Castle, and the demands of the hands for money, and the non-payment of some, and to each part thereof, defendants by their counsel objected at the time when the same was offered, as incompetent, irrelevant, and calculated to mislead the jury. These objections were each overruled by the court, and the evidence admitted, to which decision of the court defendants each then and there excepted, under this ruling.

Witness further testified, that while he was there, so far as he knew, E. S. Castle was manufacturing trunks, and selling boots

and shoes at that time, and had from five to seven hands employed in his manufactory, and that all of E. S. Castle's stock of goods in Chicago, so far as he saw, did not in his judgment exceed one thousand dollars, and that while he was there in the employ of E. S. Castle, persons frequently called at the store with bills which were not paid, and in some instances the same persons came several times.

To the ruling of the court admitting this testimony, and every part thereof, defendants then and there excepted.

Witness further testified that the goods bought of plaintiff were, a few days after the purchase, re-packed at the store of E. S. Castle, in Chicago, and shipped to his store in Dubuque, marked to a son of E. S. Castle.

On cross-examination witness testified, in substance, that shortly before the notes for the goods were given, plaintiff said to E. S. Castle, Your friend, E. H. Castle, says you are worth ten thousand dollars. To which E. S. Castle replied, No; I think I am worth about six thousand. To which E. H. Castle said, I had rated you higher. That the note of $135, which was drawn payable to E. H. Castle, was signed by E. S. Castle; that witness did not read the notes which were drawn for the goods or for the per-centage, but spoke of their contents more from the conversation he heard, than from anything else; that the first note which plaintiff wrote for $135, to order E. H. Castle, was destroyed; thinks it was torn up; but at all events is very sure it was destroyed; it was not received by E. H. Castle; and that another for the same amount was then drawn by Bullard, and signed by E. S. Castle, payable to the firm, and that this was the note received by E. H. Castle; that witness knows that the first note was not given to E. H. Castle, and that it was not received by him.

Here defendant, Castle, by his counsel, produced and showed to witness a note in the following words:

$135.

Forty-five days after date I promised to pay to E. H. Castle, or order, one hundred and thirty-five dollars at the Bank of Commerce, with use.

(Signed) E. S. CASTLE.

Witness, after examining the paper, testified, after some hesitation, that the body of this note shown him was in the handwriting of the plaintiff, he thought, and that the signature to it, he thought, was the genuine handwriting of E. S. Castle; that he thought this note had been destroyed. This note was then read in evidence by defendants to the jury. On a close comparison of the notes given for the goods as spoken of above, with this note, and laying them together, the indentations upon the edges showed that these three notes were parts of the same half-sheet of paper, and had been torn

apart. Witness was then asked by defendant's counsel whether the examination of this note did not convince him that he was mistaken in his statement, that the note received by E. H. Castle for compensation was payable on its face to the firm; and he answered, he still thought he was right at first. On further cross-examination, witness testified that the goods sold to E. S. Castle by plaintiff consisted of ready-made clothing; that witness had no experience in the business of boots and shoes, trunks, or merchandise, as a dealer or clerk, and that he had never thought of the question of the value of the stock which E. S. Castle had on hand in November, 1855, until the question was asked him on his trial as above. Something was said about the notes being guarantied by the firm, and Castle said their arrangements were such, that the firm could not guarantee them; at one time something was said about selling the goods at auction. Witness also stated that plaintiff and witness, and defendant, E. H. Castle, were believers in spiritualism; that witness and plaintiff had sat together in the same spirit circles in the State of New York, before they came here, and that witness thought he had been under its influence.

Being further examined by plaintiff, said witness, Boyington, stated that he had examined to some extent the lot of clothing sold to E. S. Castle by plaintiff while in the store, at 100 Randolph street; that he had before him at such examination a bill of said goods, which was then shown to him by plaintiff, the same that was afterwards read to him, with letter attached, and that so far as he examined he considered the prices in said bill fair and reasonable; he also stated that he thought plaintiff made a new invoice of the goods at the time of the sale, and which E. S. Castle afterwards had at his store.

And the plaintiff also produced a witness, William H. Adams, who being sworn, testified, in substance, that he resided in the city of Chicago.

Plaintiff here showed witness the said bill of goods which had been shown to the last witness, and to which was attached a letter from plaintiff to said witness, Adams, which bill and letter were in the words and figuers following, to wit:

No. of article.			
	Box No. 1.		
1	13 boys' merino coats, at.....	$2 17	$32 17
2	30 sacks	1 37½	41 25
3	6 brown cloth frocks.....	6 60	39 60
4	2 frocks	5 22½	10 45

STATEMENT—Continued.

No. of article.			
5	26 sacks	$4 40	$114 40
6	4 frocks	5 08½	20 34
7	6 do.	5 62	37 12
8	2 do.	5 50	11
9	37 boys' coats	3 50	129 50
10	1 drab cloth coat		11
11	1 do.		8 80
12	5 do.	8 25	41 25
13	2 do.	4 40	8 80
14	4 do.	9 35	37 40
15	2 do.	3 02	6 04
16	2 do.	7 15	14 30
17	7 monkey jackets	3 98	27 86
19	4 do.	3 63	14 52
20	3 do.	3 30	9 90
21	5 boys' overcoats	3 57½	17 88
	Box No 2.		633 58
18	29 monkey jackets	2 37	68 58
22	13 boys' coats	5 83	66 13
23	4 do.	4 40	17 60
24	3 do.	4 40	13 20
25	1 cloak		13 20
26	1 do.		6 60
27	3 Petersham coats	8 52	25 57
28	7 do.	7 70	53 90
29	1 do.		7 70
30	4 black coats	9 90	39 60
33	3 black and brown coats	10 45	31 35
	Box No. 3.		343 43
31	6 black and brown coats, at	8 80	52 80
32	6 do. do.	7 70	46 20
33	3 black coats	10 45	31 35
34	2 brown coats	10 62½	20 45
35	6 do.	6 60	39 60
36	2 mixed coats	7 15	14 30
37	4 brown coats	9 35	37 40

STATEMENT—Continued.

No. of article.			
38	6 beaver	$9	$54
39	1 do.		6 60
40	2 do.	8 80	17 60
41	8 do.	7 42½	59 40
43	6 do.	5 35½	32 17
44	4 velvet jackets	1 10	4 40
45	3 do.	1 65	4 95
46	12 linen jackets	1 37	16 50
	Box No. 4.		437 72
42	13 beaver coats	5 10	66 20
47	24 jackets	2 61½	62 70
48	16 pr. pants	1 79	28 60
49	9 do.	2 06	18 55
50	11 do.	2 20	24 20
51	12 do.	2 57½	30 87
52	8 do.	3 30	26 40
53	6 do.	3 57½	21 45
	Box No. 6.		278 97
60	3 blue frocks, at	10 52	31 55
61	3 do.	9 35	28 05
62	6 do.	9 90	59 40
63	5 do.	9 07	45 37
64	3 black frocks	11	33
65	5 do.	10 23	51 15
66	12 do.	8 80	105 60
67	10 do.	8 11	81 18
68	6 drab	5 22	31 35
69	25 chene		130 62
70	1 sack		11
71	1 blue		15 40
72	6 black frocks	6 42	38 54
73	11 do.	4 67½	51 42
74	20 blue frocks	6 66	132
85	8 cash. jack's	5 50	44
			$889 93

Mr. W. H. ADAMS:

Above you have bill of goods, amounting to about $2,600. If I can sell for good paper, on interest, I will deduct 20 per cent. I will give 6 to 12 months' credit if good security is given; say endorsed notes or mortgage on real estate, first encumbrance. I take it for granted that the goods have arrived at Chicago, as one box sent at same time to Belvidere has reached its destination long since. That box was somewhat damp. For fear the other boxes may be, I wish you would open a small one and have them examined. If you then think necessary, have all opened. How would it do to sell one of the small boxes at auction?

If you can't get a fair offer for them, write me and keep them carefully until I write again.

Please let me hear by first mail, and oblige,

Yours, truly,

E. F. BULLARD.

E. F. Bullard, Waterford, N. Y.

Goods rec'd Sept. 20th, '55. Total of above 5 boxes, $2,583 63.

1855.

Nov. 8. Note	$1,387	60
		2
	2,775	20
Com	125	00
Freight	10	00
	2,910	20
Stolen at Chicago	33	00
	$2,943	20

[It was admitted these figures, etc., within the red lines, were made by the plaintiff, and though on the back of the paper, were not in evidence.]

After examining the bill, witness testified that he received same by mail from plaintiff; that the goods afterwards arrived at Chicago; that he found them at Swift's warehouse; that witness then called on Castle at the store, 100 Randolph street, and showed him the bill and letter, and asked him if they could sell them; he said he thought he could. Witness gave him an order to get them from Swift's warehouse, at the same time presenting him with the bill and letter. They paid the freight.

Here the plaintiff produced a bill of the freight, $9 58. Witness stated that he got it at Swift's warehouse, and handed it to E. H. Castle, with the aforesaid invoice of the goods and letter attached. Witness saw the plaintiff at Chicago about the 1st of November, 1855. Not long after, and after Bullard left, witness had a conversation

with E. H Castle, who told witness he had sold the goods to E. S. Castle. Witness asked him if he had disposed of the goods; he answered he had sold them to E. S. Castle; that was the substance of what was said.

On cross-examination, witness, in substance, testified that said letter from Bullard to witness was attached to the bill at the time the latter was received by witness; that he had no very distinct recollection as to what he said about selling the goods; that it was out of his line of business. Witness showed the letter and invoice to E. H. Castle; has no recollection of telling him that the goods were wet. Witness does not recollect distinctly whether E. H. Castle, in speaking of the sale, said "I" sold them or "we" sold them. Witness thinks it might have been "we." He handed the invoice to Castle, and told him to do the best he could with the goods.

The witness was here requested by defendant's counsel to read said letter, which he did, and thereupon he testified: He thinks he may have said to E. H. Castle that the goods needed drying, and may have requested him to attend to it. Witness stated he supposed that his directions to Castle were to take charge of the goods, advise General Bullard, and wait his orders. Witness handed the letter and invoice to Castle, as Bullard's friend. Witness, Castle, and Bullard were all spiritualists, and had met as friends and spiritualists, at the house of witness, and also at Castle's. The s'd bill of goods above referred to was here read in evdence by the plaintiff, and the said letter was afterwards read in evidence by defendants. The witness also testified that he wrote to plaintiff that he had left the goods at the store of 100 Randolph st., and requested him to correspond on the subject. Castle & Co.

The plaintiff also produced as a witness A. D. Titsworth, who being duly sworn, testified, in substance, that on the 16th day of October, 1855, he sold to E. S. Castle, on a credit of six months, goods amounting to about $800, which have not yet been paid for.

Defendant objected to all this evidence, when offered, on the ground that it was irrelevant and incompetent, and tended to mislead the jury. The objection was overruled by the court, and each of defendants then and there excepted to such ruling, and under such ruling said witness also testified: That a few days before the 16th October, 1855, E. H. Castle said he had a stock of ready-made clothing at the store, on Randolph street, and at his instance witness looked at the goods, with a view to their purchase. On seeing them he declined. A day or two after this, defendant, E. H. Castle, told witness he had found a customer for the clothing, one E. S. Castle, and solicited witness to say nothing to prevent the sale, as he was very anxious to effect the sale; that he was a devilish good man and responsible. Witness don't remember that he said he was a relation; that a few days after this E. S. Castle came in, and

witness made sale of his goods to E. S. Castle. E. S. Castle referred witness to the firm of Filkins, Runyon & Co.; he did not see Filkins. Witness does not know that he was referred to E. H. Castle.

To this testimony, and every part thereof, defendants each objected at the time it was offered, on the ground that it was incompetent, irrelevant, and tended to prejudice the defence. The court overruled the objections and admitted the testimony to go to the jury, to which decision of the court defendants each then and there excepted.

Said witness also testified that E. S. Castle afterwards failed; thinks latter part of Dec'r, 1855, but he did not remember the date. Witness also testified that the goods he sold to E. S. Castle were selected by Mr. Parks, in the employ or connected with E. S. Castle, and that he was the same man who was afterwards arrested with Filkins & Castle. Witness said he did not know of the goods being lost which were at 100 Randolph st.; style not suited to this city, nor to his business. Goods witness sold E. S. Castle purchased for Dubuque; Parks said he was in employ of E. S. Castle; had not much talk with E. H. Castle, as he relied on his referees.

Plaintiff then produced a witness, Joseph Linus, who, being sworn, testified in substance that he lives in Chicago with Post & Thompson, wholesale liquor dealers, and that E. S. Castle bought of them in January, 1856, a bill of goods, and referred to Filkins and to E. H. Castle, as to his responsibility. That from 6th to 10th of January, 1856, witness called on E. H. Castle at 100 Randolph. He said he considered E. S. Castle perfectly good; that they had a good many transactions with him, and always found him prompt, and would be glad to sell him on a credit $8 to $10,000 worth of clothing which they had.

E. H. Castle then called upon Filkins, who was present, who said he was very good; they said they considered him good for $8,000; they had known him for a good while. E. H. Castle said E. S. Castle had $10,000 worth of goods in Dubuque, which he understood were all paid for.

To the above testimony of said witness Linus, and each part thereof, defendants, when the same was offered, objected as irrelevant and incompetent; but the court overruled the objections, and admitted each part of said testimony, and defendants each excepted.

Plaintiff then produced A. L. Calvert, who, being sworn, testified in substance, that in fall of 1855 he lived in Chicago, and was in the employment of Benedict, Malony & Farnham, as a salesman; that E. S. Castle bought goods of them October 16th, 1855; that he referred to Filkins, Runyon & Barker; that his bill was $548 50, at six months; that Mr. Parks came with E. S. Castle and selected the goods, hats, caps, &c., and that the goods were bought for and shipped to Dubuque; that witness was afterwards in E. S. Castle's

store at Dubuque, in January, 1856; that the stock of goods there at that time was about $5,000 to $6,000. To the giving of the testimony of this witness, and of every part thereof, defendants objected when the same was offered; but the court overruled the objections and admitted the testimony, and defendants each then and there excepted to said decision of the court; and after the evidence of this witness was given, defendants moved to exclude the testimony; the court declined to decide the motion at that time, but reserved the question, and stated it might be considered hereafter, and defendants each excepted, because the court did not at that particular stage of the case exclude the testimony. The witness stated that the debt of Benedict, Malony & Farnham had been secured by deed of trust, but had never been paid.

Plaintiffs then produced as a witness B. W. Runstead, who, being sworn, testified that in 1855 he was in commercial agency business in Chicago, in 1855 and 1856; that he called on E. H. Castle, in consequence of some intimation which purported to come from Post & Thompson, which facts, however, he did not disclose, nor what object he had in view, near 1st of January, 1856, and asked him about the responsibility of E. S. Castle; that E. H. Castle said he had been in business in Chicago, and had made money; that he had sold him a bill of clothing of $2,000 or $3,000, and that he was good for $10,000. Witness at the same time also asked Filkins about him, and he said they had sold him hardware for his store in Dubuque; that he had always paid up promptly; that he considered him good for $5,000 or $6,000.

To the above testimony of said Runstead, and to each part thereof, defendants objected, when the same was offered, as incompetent and irrelevant; but the court overruled the objections, and admitted the testimony, and each of the defendants then and there excepted.

Witness also testified that after the sale of Post & Thompson, spoken of by witness Calvert, witness saw at the auction rooms at 100 Randolph st., casks of liquor, with the cards of Post & Thompson on them, addressed to E. S. Castle, Dubuque. There were 8 casks; 4 had cards and 4 had not.

To this testimony defendants objected when offered, but the court held the evidence admissible, and defendants each excepted.

Plaintiff then offered in evidence a writing, purporting to be a copy of a record of certain judgments in favor of Joseph Filkins, and against said E. S. Castle, which writing was in the words and figures following, viz:

Records of District Court of Dubuque County, Iowa, Book D, p. 623, et seq.

JOSEPH FILKINS vs. EDMOND S. CASTLE. } Confession of Judgment, November 27, '55.

Whereas Joseph Filkins is contingently liable in the sum of six thousand and $\frac{63}{100}$ dollars for indebtedness of Edmond S. Castle, as follows, to wit: in the sum of three thousand dollars on a certain letter of credit given by E. H. Castle, and endorsed by said Joseph Filkins, to the creditors of the said Castle, (E. S.,) to wit, given and endorsed to Messrs. Wheelock & Daniels in the city and State of New York; balance of goods receipted for by said Filkins to the sheriff of Cook county, in the State of Illinois, to wit, two hundred and ninety-four dollars' worth; in the further sum of five hundred dollars for endorsements by the said Filkins on a certain note of the said Castle to R. K. Swift's bank in Chicago, Illinois; in the further sum of five hundred and five dollars for endorsement on a certain promissory note given by said Castle to Peters & Co. of New York; in the further sum of four hundred and five dollars and sixty-three cents for a certain bill of goods furnished the said Castle by the said Filkins; in the further sum of three hundred and ninety-six dollars due to certain banks in Chicago, Illinois, and which the said Filkins has agreed to see paid; in the further sum of four hundred dollars as bail on an appeal in legal proceedings had in the court of Cook county aforesaid; and in the further sum of five hundred dollars for endorsement on a certain draft drawn on J. D. Park, of Dubuque, by the said Castle, and endorsed by Filkins, Runyon & Barker, and for which said Filkins is contingently liable, making in all the sum aforesaid, to wit, the sum of six thousand and $\frac{63}{100}$ dollars: Now, for the purpose of securing the said Joseph Filkins against the said contingent liabilities aforesaid, I do hereby confess judgment for the sum of six thousand and $\frac{63}{100}$ dollars, the said sum not exceeding the amount of my liabilities, and for which the said Filkins is contingently liable.

Given under my hand at Dubuque, this 27th of November, A. D. 1855.

(Signed) E. S. CASTLE.

Subscribed and sworn to before me, this 27th Nov., 1855.

BENJ. RUPERT, *Clerk.*

It is therefore considered and adjudged that the plaintiff have judgment against the defendant for the said sum of six thousand $\frac{63}{100}$ dollars and the costs of this suit, which costs are taxed at four $\frac{75}{100}$ dollars, and that execution issue therefor.

JOSEPH FILKINS vs. EDMOND S. CASTLE. } Confession of Judgment.

Whereas Edmond S. Castle is indebted to Joseph Filkins in the sum of eighteen hundred and fifty dollars, as appears by a certain promissory note hereto attached, dated Chicago, November 23, 1855, payable to the said Filkins or bearer, for value received; and

whereas the indebtedness aforesaid arose as follows, to wit: cash loaned the said Castle three hundred and fifty dollars, hardware furnished seven hundred dollars, and eight hundred dollars' worth of goods receipted for by the said Filkins to the sheriff of Cook county, in the State of Illinois: Now, therefore, in consideration of the premises aforesaid, and the indebtedness aforesaid, I, Edmund S. Castle, do hereby confess judgment for the said sum of eighteen hundred and fifty dollars, and do hereby declare that the amount for which said judgment is confessed, to wit, eighteen hundred and fifty dollars, is justly due the said Joseph Filkins.

Given under my hand at Dubuque, Iowa, this 27th day of November, A. D. eighteen hundred and fifty-five.

E. S. CASTLE.

Subscribed and sworn to before me, the 27th of November, A. D. 1855.

BENJ. RUPERT, *Clerk.*

It is therefore considered and adjudged that the plaintiff have judgment against the def't for the sum of eighteen hundred and fifty dollars and costs of suit, taxed at four $\frac{75}{100}$ dollars, and that he have execution therefor.

THE STATE OF IOWA,
Dubuque County, ss.

I, Benjamin Rupert, clerk of the district court, in and for said county, do hereby certify, that the foregoing are true, correct, and examined copy and transcripts of two confessions of judgments in the foregoing entitled causes, wherein Joseph Filkins is plaintiff, and Edmond S. Castle is defendant, as the same remains of record in my office, and the whole of such records.

In witness whereof, I have hereunto set my hand and seal of said court hereto affixed, at office in the city of Dubuque, this 20th day of June, A. D. 1856. [SEAL.]

BENJAMIN RUPERT, *Clerk.*

STATE OF IOWA,
County of Dubuque, ss.

I, Thomas S. Wilson, the presiding judge of the district court of Dubuque county, in said State, within named, do hereby certify, that Benjamin Rupert, whose signature appears within, was at the date of his certificate within, clerk of said court; that the seal of said court is thereunto attached, and that the above attestation, signed by said clerk, is in due form of law.

T. S. WILSON,
Pres. Judge Dist. Ct. Dubuque Co., Iowa.

The said record and transcript all on one paper, and certified

as one record of two distinct judgments; to the reading of which transcript defendants each objected, on the grounds—

1st. That the record was not properly authenticated.

2d. That the contents thereof were incompetent, irrelevant, and tended to mislead the jury. The court overruled these objections and admitted the supposed transcripts to be read in evidence to the jury as tending to show the previous circumstances of Edmund S. Castle, to whom the goods were sold, and the knowledge thereof by one of the defendants, to which decision of the court the defendants each then and there excepted.

The plaintiff also produced as a witness John E. L. Frasher, who, being sworn, in his examination in chief testified, in substance: That 27th December, 1855, Frasher, Carr & Co. sold E. S. Castle, on a credit averaging six months, $1,344 in dry goods, but witness was not present at the sale; that about two months afterwards E. S. Castle broke up; that in April or May, afterwards, witness and Farnsworth and Colby got a warrant and an officer at the door of E. H. Castle's store, and then called on him and told him they wanted their claims against E. S. Castle settled; E. H. Castle declined to do anything about it, so they called in the officer and had said E. H. Castle arrested. On cross-examination witness stated that his firm, at the time of the sale, took a chattel-mortgage, to secure the payment, upon E. S. Castle's stock of goods in his store of Lake street, and that at the time E. S. Castle broke up, the goods in that store were taken to 100 Randolph by the sheriff; that witness called on the sheriff to ascertain about the custody of those goods, and learned from the sheriff that there were two or three judgments ahead of their mortgage; witness satisfied himself that there was not enough to satisfy the judgments and mortgage, and concluded that the mortgage was not good for much.

And the plaintiff also produced as a witness J. H. Williams, who being sworn, testified in substance:

That in Feburary and March, 1856, was engaged in police business. E. S. Castle was absent from the city of Chicago, and that witness went to try and find him in Illinois, Iowa and Minnesota, and could not find him, and that after witness's return, defendant, E. H. Castle, told him he had seen E. S. Castle in April, 1856, in Iowa. To this testimony, when offered, defendants each objected, on the ground that it was irrelevant, incompetent, and tended to mislead and prejudice the jury. The court overruled the objections and the testimony was admitted, to which decision of the court the defendants then and there excepted.

And the plaintiff also produced as a witness William S. Bond, who being sworn, testified in his examination in chief, in substance:

That he knew E. S. Castle. That in the month of December, 1855, a little before New Year's, said E. S. Castle applied to wit-

ness to buy goods on credit, and referred to Captain Castle, Filkins and Colby. That he called on Captain Castle, (E. H. Castle,) who told him that he knew E. S. Castle to have about $10,000 cash capital in his business; that he considered him perfectly good for any amount of goods he wanted to buy and use in his business. That witness then called on Mr. Colby. That witness called on Filkins, who considered E. S. Castle perfectly good. That they had sold him a considerable amount of goods; that he had paid them considerable sums of money, $1,000 or $2,000 in the last 60 days; that he then owed them a small amount; that he usually paid his drafts, and sometimes before they were due. He considered him perfectly good for any amount he wanted in his business; that he should sell him any amount he wanted on these representations. Witness sold him, E. S. Castle, a bill of goods over $1,200, on four months' credit, no part of which has ever been paid. They were bought for the Dubuque market, and delivered at E. S. Castle's store, on Lake street, Chicago.

To the foregoing testimony of this witness, and every part thereof, defendants objected at the time it was offered, on the ground that it was incompetent, irrelevant, and tended to mislead the jury. The objections were overruled by the court and the testimony admitted, to which decision of the court the defendants each then and there excepted.

On further examination, said witness also testified for plaintiff, in substance, that the case in which Castle, Filkins & Parks were arrested in April, 1856, was adjourned over till another day, and shortly, about half an hour after the adjournment, defendant, Castle, came to witness and told him to come to the store, 100 Randolph street. Witness went there andmet defendant, Castle, who said to witness, You have beat us at our own game. We don't want this trial to go any further. He said he would settle in one or two years. Witness declined this, and said, I paid cash and must have cash. Castle said he could not pay cash. Wanted witness to see Frasher, Colby and others, creditors of E. S. Castle, and be sure to be at his office early next morning.

The next morning, when they met, defendant, Castle, said: "You have just the right bower on the left, and that always takes the trick, and when the trick is taken I always give up the game." That he wanted to settle; that he did not want the suit to go any further. A proposition of settlement was agreed upon, and the trial adjourned over to give time to effect it. Witness stated that a settlement took place to the amount of some $15,000, but that nothing was said in any of these conversations about any claim of the plaintiff.

To all the foregoing testimony of this witness, and to each part thereof, defendants objected at the time it was offered, on the ground that it was irrelevant and incompetent, and tended to mis-

lead and prejudice the jury. The court overruled the objections, and the testimony was admitted, to which decision of the court the defendants each then and there excepted.

Witness further testified for plaintiff, that after said settlement in Randolph street was made and concluded, and on same day and place, Filkins took witness by the arm, and said, pointing to them, "There are your goods, Mr. Bond, in those boxes under the counter." Witness testified that they were the same boxes he had delivered to E. S. Castle at his store in Lake street. The witness did not know they were there before. To these declarations of defendant, Filkins, defendants objected at the time they were offered, on the ground that they were irrelevant and incompetent.

The court overruled the objections and admitted the testimony, to which decision of the court the defendants then and there excepted.

Witness further testified for plaintiff, that before the settlement, defendant, Castle, at the store of witness, said to witness that he should have called at his store about the goods; that he had done wrong and wanted it settled.

Witness said E. S. Castle bought the goods of him for the Dubuque market. The settlement was in May, 1856. Nothing was said about plaintiff's claim. That witness was one among others who instituted criminal proceedings against E. H. Castle, Filkins & Parks.

The plaintiff also produced as a witness John Devlin, who, being sworn, testified in chief, in substance, that in November, 1855, he was in the mercantile agency of B. Douglass & Co.'s branch, in Chicago; that on the 16th day of November he called upon E. S. Castle and had a conversation with him; he then called upon Filkins, and told him that E. S. Castle had told witness about him and his partner not getting along very well together; that he wanted to get rid of him; that Filkins had incurred some liability or signed some bond to enable E. S. Castle to get rid of this partner. That Filkins had since withdrawn a lien which he had taken for his protection upon some property of E. S. Castle, and that the property had been sold for $2,000, which had been put into E. S. Castle's business. That Filkins replied to witness that all this was strictly true; that E. S. Castle was an honest man, but a poor business man; that he had sold him goods; that Castle was worth about $5,000 over and above all liabilities; that E. S. Castle had taken an account of stock.

To these declarations of Filkins, and each of them, defendants objected when offered, on the ground that they were irrelevant and incompetent, and tended to mislead and prejudice the jury. The court overruled the objections and admitted the testimony. To which decision of the court the defendants, each, then and there excepted. And the plaintiff also produced as a witness Samuel H.

Turrill, who, being sworn, testified in his examination in chief, in substance, that Turrill & Haven were in the liquor business in Chicago, in 1855, and sold a bill of goods to E. S. Castle, 18th October, 1855, over $1,000, on a credit of 3 and 5 months; that it was sent to Dubuque; that E. S. Castle referred them to Filkins, Runyon & Company, and to Castle & Granger. Witness saw Barker, but did not see any of the defendants.

To all the foregoing testimony of this witness, and every part thereof, defendants severally objected when offered, on the ground that it was irrelevant and incompetent. The court overruled the objections and admitted the testimony to go to the jury. To which decision of the court the defendants, and each of them, then and there excepted.

Witness further testified for plaintiff, that in January or February, 1856, witness was in Dubuque; that the store of E. S. Castle there was closed and was in possession of the sheriff; that witness went to the clerk's office and got a writ of attachment against E. S. Castle's property, and gave the same to the sheriff, to be levied. That witness looked into the door of the store; saw boots, shoes, trunks and clothing. Witness thought there might have been two thousand dollars' worth. To which testimony of witness, and every part thereof, defendants objected at the time when the same was offered, on the ground that it was irrelevant and incompetent and tended to prejudice, and insisted that the best evidence of an attachment was the production of process, and that witness ought not to be permitted to speak of a process without its production. The court held that the witness might speak of the process to identify it, but could not speak of the contents of it, and overruled the objections and admitted the testimony. To which decision of the court the defendants, each, then and there excepted.

Here plaintiff produced and offered to read to the jury three papers, which he alleged were copies of three letters, alleged by plaintiff to have been written by defendant E. H. Castle to E. S. Castle, and to lay the foundation for such evidence, offered to the court the following proof:

Said William S. Bond, who testified that he saw in Mr. Farnsworth's office, in Chicago, certain letters, which appeared to be originals, which Mr. Lombard, at the time, was copying; that he believes he knows Captain Castle's signature; had seen him sign his name; saw said letters after he saw him write; never saw him do any other writing, except sign his name; that he only saw this on the occasion of the time of the settlement spoken of in his testimony to the jury, but that he signed it then several times.

Witness was then asked for his opinion as to whether the letters which he saw Lombard copying were in the handwriting of E. H. Castle?

To this defendants objected, that he did not show a sufficient

knowledge of the handwriting of defendant to give an opinion. The court overruled the objection, and defendants, each, then and there excepted.

The witness answered, that, to the best of his knowledge, said letters which he saw Lombard copying were in the handwriting of defendant, E. H. Castle, and that there were two or three letters.

J. G. Lombard also testified to the court, that he had heard the testimony of witness Bond.

Here plaintiff showed to witness the three papers which he proposed to read in evidence, as aforesaid.

Witness testified that they were in his handwriting; that he copied them from certain others in the office of Farnsworth & Burgess, in the spring of 1856, about the time of E. H. Castle's arrest; that the last time he saw the originals they were on the table in Farnsworth's office, among other papers. At the time he copied them, Mr. Farnsworth handed me the letters and requested me to copy them. Mr. Farnsworth seemed *seemed* very careful of the originals; said he did not want the originals to go out of his hands.

Witness further testified that he had made search for the said original letters in Mr. Farnsworth's office, and could not find them; that Mr. Farnsworth is now at his residence, about 30 miles from here, very sick, and unable to attend court. That said search of Farnsworth's office for said letters was made on yesterday, at request of pl'ff, and witness did not hear that they were missing until then. At the time witness made the copies, Mr. Farnsworth handed him the originals, and witness does not know where they came from or where Mr. Farnsworth got them. Never missed them till he searched for them, and always supposed they were in the office. When last saw the original, they were on the table among other papers. Witness is now a partner of Mr. Farnsworth, and has charge of all his office papers; was then a clerk; they had no other clerk. Has looked everywhere, and does not believe they are in the office; they are true copies.

Wm. T. Burgess, the attorney of plaintiff, then testified to the court that he and Mr. Farnsworth were formerly partners; that they separated in May, 1857, and witness took a new office; that they divided their suits, and that witness took the papers (belonging to the suits he took) to his new office; that, in the division, the Castle matters were left in Mr. Farnsworth's hands, and witness did not take any of the Castle papers to his new office at the time of the dissolution.

Witness saw the letters (spoken of as original by Lombard) at the time Mr. Lombard copied them, and thinks Mr. Farnsworth had them there again in the fall of 1856, and showed them to E. S. Castle, when he made an affidavit, to which these copies (now offered) are attached; that that affidavit was made to be used in a

chancery suit for the defence, which suit is pending in a State court, in which suit Emeline Castle is complainant and Farnsworth and witness were solicitors for def't; that witness, after dissolution, took no part in these matters until some time after he dissolved partnership with Mr. Farnsworth, but Mr. Farnsworth conducted the business; that some time after the dissolution of their partnership witness was again retained in the case, and from time to time, as occasion required, had got papers from the office of Mr. Farnsworth; that witness went to Farnsworth's office, a day or two ago, and searched for these original letters, but could not find them; that he had searched in his own office, about a month ago, for them, by examining the pigeon-holes in which he keeps the papers relating to the Castle suit, but did not find them; that he did not search through all the papers in his office, because, a few months before, he went over all the papers in his office, and assorted them, and he is confident they are not there, and that he does not know where said original letters are.

Witness further stated that the defendants in said chancery suit are numerous, and that there are other attorneys engaged on the same side of that case with him; and that the case and the papers on file therein had been before the master; and that the papers on file in that case were at one time missing.

L. D. Wilkinson, being sworn, testified to the court that he was of counsel with Mr. Farnsworth in some of the criminal and the chancery cases; that he has seen original letters which, looking at the heading and signatures of the papers now produced, he should say that such papers might be copies; that witness has frequently seen the letters to which he refers; he last saw them 11th December, 1856, at the office of Farnsworth & Burgess, at the time of a consultation about the bill in chancery; that at that time the said letters were there in a package, folded up by themselves and marked, and among the papers belonging to the chancery cause; that witness left the office almost immediately, and probably whilst the papers were on the table.

And, on cross-examination, said witness testified, in substance, that when he used the term original, he means that the letters were represented to him as such; that he did not read the letters at the time of the consultation, but had seen and read them before, nor can he say that they were opened then. Witness thinks they were wrapped up separately; that Colby, Bond, Lumbard, Post, and Thompson, and several other creditors, (and their attorneys,) of E. S. Castle, were present at that consultation; that witness has frequently seen Mr. Farnsworth in Chicago since that time; he was here and attending to the chancery case before the *the* master a few days after the consultation.

The defendants' counsel here presented to the court two affidavits of E. S. Castle, to which were annexed the copies of the

letters referred to by the witnesses—one of which affidavits contained a particular clause, to which the attention of the court was called, (that within brackets,) and to no other part of the affidavit was the attention of the court called by the counsel on either side.

Application for an Injunction.

Cook Circuit Court.—In Chancery.

EMELINE CASTLE, by her next friend, &c.,)
vs.)
O. V. COLBY et al.)

STATE OF ILLINOIS,
Cook County, ss.

Edmund S. Castle, being duly sworn, doth depose and say, that he is a cousin to Edward H. Castle, and is well acquainted both with the said Edward H. and his wife, Emeline Castle, the said complainant; that he has known the said Edward H. ever since he was a boy, and the said complainant for the last ten years.

This deponent further says, that the said Emeline, the complainant, is the second wife of the said Edward H. Castle; that his first wife died at Chicago, in the State of Illinois, in the year 1846, as deponent believes.

This deponent further says, that the said Emeline, the complainant, had, for a number of years prior to the death of said Castle's first wife, lived in the said Castle's family; that she had so lived from the time she was quite a young girl, as one of the family; that during all said time the said Emeline had no means except what she derived from her labor, to the knowledge and belief of deponent.

This deponent further says, that he knows the time well when, and the circumstances under which, the lots one and two, of the northwest quarter, and the west half of the northeast quarter, of section eighteen, in township forty-two north, of range eleven east of the 3d principal meridian, in the county of Cook, and State of Illinois, were purchased. The said lands were entered with the money of the said Edward H. Castle, in the name of Emeline Bennett; the said Edward H. Castle had been in the mercantile business a short time previous to entering said lands, and, failing to meet his obligations and debts, had made an assignment, as deponent remembers, to Messrs. Ogden & Arnold, for the benefit of his creditors. That at the same time of the entering of said land the said Edward H. also furnished money with which three other eighty-acres lots lying adjoining on the south were entered, in the name of Thomas Whitlock, a cousin by marriage with the said Edward H. Castle, the same Whitlock who was afterwards trustee for the said Emeline Castle.

Deponent further says, that directly after the entry of said lands,

he, by an agreement with the said Edward H. Castle, went upon said lands (entered in the name of Emeline Bennett,) and built a house and barn thereon, and fenced and ploughed a part of the same, and made other improvements thereon, and continued to reside thereon for about two years, and during that time he purchased and put upon said farm three yoke of oxen, some six cows, one or two horses, a waggon, ploughs harrows, and other farming tools, for all of which the said Edward H. Castle furnished this deponent the money with which to buy and make said improvements. The said Edward H. Castle also had a span of horses which were put upon said farm.

This deponent further says, that at the end of about two years from the time he went upon said farm, he had a settlement with the said Edward H., and the said Edward H. agreed to give him a piece of said land lying on the east side of the Chicago and McHenry co. road, of about sixty acres, and deponent afterwards received a deed of the same from the said Emeline Bennett, (now Emeline Castle,) in pursuance of said agreement, and moved on to the same, and the said Edward H. moved into the house which this deponent had built upon said farm, and lived upon said farm about one year before his marriage with the said Emeline.

This deponent further says, that some time previous to the marriage of the said Edward H. with the said Emeline, the said Edward H. procured a will to be drawn and executed by the said Emeline Bennett, which was witnessed by this deponent and the father of the said Edward H. Castle, by which the said Emeline devised and bequeathed the said real estate to the children of the said Edward H. Castle, which he had by his first wife.

[This deponent further says, that the letters hereto attached are true copies of genuine letters received by this deponent from the said Edward H. Castle last winter, when deponent was in Iowa, attempting to evade his creditors by the advice and request and direction of the said Edward H.; that the originals of which these are copies, now in possession of deponent, were all of them received from the said Edward H. Castle.]

This deponent further says, that the copy of a statement or affidavit of this affiant, taken and sworn to before John W. Magill, esq., and which is hereto attached, is true in substance and in fact.

E. S. CASTLE.

Sworn to and subscribed before me, this 27th day of November, A. D. 1856.

VOLUNTINE C. TURNER,
Notary Public.

Plaintiff then offered to read in evidence the copies aforesaid, which said Lumbard testified he had made, and which were detached

from the affidavits of E. S. Castle. The above is all the evidence offered to the court to lay the foundation for the reading of said copies, to which defendants objected on the grounds—

1st. That the matter of the letters, and each part thereof, was irrelevant and incompetent.

2d. The handwriting of the supposed originals was not sufficiently proven.

3d. That the loss of the supposed originals was not sufficiently established to allow copies to be used. That no proper foundation was laid for the evidence offered.

The court was of opinion that the evidence showed that the place of custody for the letters was the office, and also that there was sufficient proof of the handwriting to go to the jury, and overruled the objection, to which defendants excepted, and the copies were read as follows:

CHICAGO, *Feb'y* 20, 1856.

DEAR SIR: Yours of the 18th came to hand this moment. I am perfectly surprised to see how careless you are, and observe how indifferent you appear, after the arrest you have just been released from. Before daylight, after you left, my house was searched for you, and barn also, the last place you took your trunks from. You act as if it was boy's play; but you may depend upon one thing certain—if you delay one moment's time in getting out of the reach of these writs, all will be over with you. Two men, with the documents, are after you now at Dubuque. Send the trunk, with a name upon it, by express home, and go on, where you talked of going, as fast as you can. Leonard is all right; borrow no trouble about any one, but don't delay; the greatest excitement prevails about you. I was sued on your account four times yesterday, and your matters look worse than ever. There is an officer after you at Detroit, trying to get those goods. I am cursed by all the men you ever did business with. Snow has a writ against you for fraud. Don't deceive yourself in regard to your safety—go ahead. Your coming back to town the night you left, was most foolish thing I ever heard of. I am actually afraid to direct a letter to you, under almost any circumstances, to any place. Don't write again until you get where it is warmer weather; anything you wish, that is in my power, I shall do. Your letters I will direct to N. Orleans to-morrow. I am in hopes you will change things for the better. All your affairs will be kept so you can see all, how and where it goes, and for how much, and all the particulars. Your friends think they will have you in the stone house here in less than one month. No one seems to doubt it in the least. Put out at once; do not tamper with your liberty; you have made such representations that nothing can save you. You better let Fred. go to the devil alone; he will curse you, if with you. N. O. is the place

to fetch up at first. I often think I fear your fate more than you do yourself.

FRIEND.

CHICAGO, *Feb'y 23d*, 1856.

E. S. CASTLE:

DEAR SIR: Yours of the 21st came to hand this moment. You could not have received two letters written to Abram Jones, directed the same to Davenport; that would have explained fully that there is five different men and officers out now after you for fraud. Do not write to Colby or any one again, except they feel your interest at heart; he has no sympathy for you nor any one; only with an idea to make money out of you. Nothing can save you if they get you. I am having a great deal of trouble on account of your business. You are not aware of the danger you are in. You speak of compromising your debts. Colby would not give one of those lots to save your life; as soon as he received your letter from Aurora, he and your Boston jeweller, who was here, started in pursuit of you. I had no idea you would write any one but myself, in this city. Get out of the way and correspond in the name of A. Jones, on all occasions. I suppose you did not call for letters for that person; you forgot what you wrote; better keep a copy of all your letters. You had better send the trunk with the name upon it home, or else burn it up; I thought you was a man of more sense than to have taken it. There is three writs of the same character out, as the others were, that were put into the store. Colby and the Boston jeweller are in town this morning; have called here. They have been on track of you the last three days, but have missed you, and with that trunk, which I wonder at. After this, take care of yourself, and communicate to but one in this city. Leonard is all right; borrow no trouble about anything or body but yourself. I this day direct one letter to E. S. Castle, and one to Abram Jones.

LECLAIR HOUSE,

Sunday, Feb'y 24th, 1856.

E. S. CASTLE:

DEAR FRIEND: I left home yesterday afternoon, thinking I could see you here before you left, but find you left for the West; presuming you did not get my letters at this point, directed to Abram Jones, as you directed. They would have explained how things stood at home. I wrote you two letters yesterday morning, mailing one to A. Jones, the other to yourself to Iowa city; you have, no doubt, received them by this time. Your creditors are after you with hot blocks. The jeweller man, from Boston, is out with a writ; Colby is looking after you with him. The letter you wrote Colby from Aurora, put him on track of you. Bond is at home looking for you; in fact you must keep out of the way for at least

one year, and by that time perhaps I can turn out real estate, or it will die out a natural death. You ought to have gone where you talked of, when you left home; you cannot tell anything about the bitter feelings against you. Leonard is all right; borrow no trouble about anything but yourself; never write to any one in our city, but the one that has been your friend since the days of boyhood. They have been to Dubuque, and are out after you; five of them now. I wonder that you have escaped all of them, especially after writing Colby. How indiscreet for you to put the least confidence in a man that to your knowledge takes all the advantage of his particular acquaintances; never write any one of them again while you have your senses. I should come to Iowa city to see you, if I dared to leave home so long; but dare not return to-morrow. Now, Smith, take care of yourself; dispose of the marked trunk, either by sending it home by express or burn it; send it home; then go (into the frontier or south.) I shall visit you within one year, let you go where you may. If the new seat of government is a pleasant and healthy place, I would have no objections to move there myself; this trouble of yours has made me very unpleasantly situated where I am; at all events, I feel like going where I can be first and not third rate in the kitchen. Correspond with me in the name of Abram Jones; sign Jones to all letters sent me. Burn this letter and all of your letters at once, so that if you was taken sick, or anything occurred to you, they would be where they should.

I see, in looking over all your transactions, that you lack caution. Colby told me yesterday morning that you was a damned fool and did not know how to do business, and that any man having anything to do with you placed himself in danger. He feels more bitter than any other man. I was very much displeased at you when I found you had written him, or even Miss Sheldon; she is no doubt a true friend to you, but you do not want to trifle with your liberty, or place yourself in any one's hands; if you write her, it should be enclosed to me and handed her by myself, and not let her know where you are. I dare not direct a letter to you in my own handwriting. You will see I am using great caution; they are on both Southern and Central Michigan R. Roads after you, besides looking West. The fortune-telling lady at the Sherman House tells me that there is something good before you if you go far enough for it, but that your pursuers passed you twice with writs since you left home; she said you had a trunk marked, and that you was not suspecting any trouble; she says you will get into a large thing, and that I shall be interested with you. I had rather hear you had gone over the *planes* to California than not; may be you can get into a train and help drive the teams on the plains; if you can, go ahead; keep a stiff upper lip; you know how I went, and the obstacles that met me.

Keep me posted all about what you see and can do.

From your old friend,

WILLIAM BULLMORE.

DAVENPORT, *Leclair House.*

I received yours, dated 21, and mailed 22; rec'd it 23. I see your name on the books of this house.

Said L. D. Wilkinson was then recalled and testified to the jury for plaintiff, as follows: That at the settlement spoken of by witness Bond, the amount of the claims settled was $13,400 35; that most of the creditors lived in Chicago; that all claims were taken down by him and figured up at that time. Witness read a list of the claims settled, and in the presence and hearing of E. H. Castle and Filkins.

Copy List produced by Wilkinson..

O. V. Colby	513 30	1,197 67
E. R. Kellogg & Co	130 80	305 20
Frasher, Carr & Co	378 43	973 10
A. D. Titsworth & Co	268 34	691 82
Rawson, Bartlett & Co	60 64	141 51
Ward, Doggett & Co	80 08	186 88
Williard, Peck & Co	38 32	89 43
Post & Thompson	265 06	681 51
William S. Bond	372 50	869 18
Ideson, Jordan & Bellows	180 13	463 22
Bull, Hill & Granger	287 18	738 44
Benedict, Mallony & Farnham	171 64	400 47
Day & Lee	270 26	694 94
Joseph T. Ryerson	88 93	207 50
E. E. Cook	99 00	231 00
Mills, Bourn & Dillenbick	120 00	280 00
Mills & Foristate	75 00	175 00
Turrell & Haven	389 67	1,001 98
D. L. Jacobus & Bro	50 07	128 74
Jewett, Gates & Johnsen	13 91	32 44
D. & L. Hanson	17 08	39 83

Plaintiff was not among the claimants. To all of the foregoing testimony of this witness, defendant, at the time the same was given, objected on the ground that it was irrelevant. The court overruled the objection and admitted the testimony to go to the jury. To this decision of the court the defendants, and each of them, then and there excepted.

The plaintiff then introduced as a witness David L. Jacobus,

who being sworn, testified in chief, in substance: That in January, 1856, he sold to E. S. Castle $187 of furniture, on an order of E. S. Castle in favor of Parks, and the furniture was sent to the house of E. H. Castle, and that the bill has never been paid. To all the foregoing testimony of this witness, and every part thereof, when offered, defendants objected, on the ground that it was irrelevant. The court overruled the objection and admitted the testimony to go to the jury; to which decision of the court the defendants, and each of them, then and there excepted.

And the plaintiff also produced as a witness Lucius A. Willard, who being duly sworn, testified in chief, in substance: That in October, 1855, witness was in the furniture business in Chicago; that E. H. Castle then came to his store and applied to buy a bill on account of E. S. Castle. Witness told him he knew nothing of E. S. Castle, and asked him if he was safe and good; defendant said he was worth from $5,000 to 10,000; that he was owing him, and he could make that turn with him. Witness sold defendant Castle $112 furniture and charged it to E. S. Castle. To all the foregoing testimony of said witness, and every part thereof, defendants, at the time it was offered, objected, on the ground that it was irrelevant and incompetent. The court overruled the objection and admitted the testimony, to which decision of the court defendants, and each of them, then and there excepted.

Mr. Linus was then recalled, and testified for plaintiff, that the goods of which he spoke before were delivered to E. S. Castle on Friday, 11th January, 1856; that on that evening he saw the goods in E. S. Castle's store, in Lake street; that on the next morning he went there and the goods were gone. To all the foregoing testimony of this witness, and each part thereof, defendants objected at the time the same was offered, on the ground that it was irrelevant and incompetent. The court overruled the objection and admitted the testimony, to which decision of the court the defendants, and each of them, then and there excepted.

And the plaintiff also produced as a witness George D. Slade, who being sworn, testified, on his examination in chief, in substance: That he was one of the firm of E. R. Kellogg & Company; that about 15th October, 1855, they sold E. S. Castle goods amounting to $430 on a credit of from 3 to 5 months; the goods were selected by Parks, and were sent to Dubuque—hats, caps, and furs; that the bill remains unpaid; that when the first note fell due, witness called on E. H. Castle, who said that E. S. Castle was perfectly good; that he was expecting some money from Dubuque; that E. S. Castle was east, at Boston, witness thinks, buying a stock of goods, and had left his business with him; that defendant, E. H. Castle, said witness need not be alarmed, E. S. Castle was doing a good business; that E. H. Castle had offered to put in

$5,000 in money with E. S. Castle, but E. S. said he did not need it; he had capital enough without it. He said E. S. Castle was making 40 per cent. on his trunk business. At this time E. S. Castle's store on Lake street was not closed, but he heard in a few days it was closed. The witness Boyington was then recalled, and testified, that while he was with E. S. Castle, in the fall of 1855, no goods were received, so far as he knew, from New York. Plaintiffs then read in evidence the answer to eighth interrogatory to the deposition of Taylor, taken by defendants in this cause, which answer defendants admitted to be true, and was in the words and figures following, to wit:

I know how the business was closed in the store. Two executions, one for the sum of about $1,800, and the other for about six thousand, in favor of Joseph Filkins against the said E. S. Castle, *was* placed in my hands, as deputy sheriff of Dubuque county, some time in the month of Nov., A. D. 1855, by virtue of which execution I levied upon the goods in the store, and sold upon said execution all of the goods that I found in the store, and returned the same with my acts therein to the clerk of the district court of Dubuque county, from whence they issued. The goods at the time of levy amounted, as per appraise*d*, to about five thousand dollars, as near as I now can recollect. The amount realized over and above the expense of sale, and accounted for upon the executions, was about twenty-six hundred dollars.

The above was substantially the evidence for the plaintiff, and here the plaintiff rested his case, there being no evidence connecting Granger with the transaction, other than what might exist from the fact of his being one of the partners.

And thereupon defendant, Elihu Granger, moved the court as follows: The defendant, Elihu Granger, moved the court to direct the jury to render a verdict of non-suit, or that the court would order a non-suit to be entered as to defendant Granger, upon the ground that the evidence given to the jury by plaintiff did not tend to charge this defendant. This motion the court overruled, and said defendant, Granger, then and there excepted to the decision of the court. And thereupon all the defendants moved the court for a non-suit as to Granger, upon the ground that the evidence in the case did not tend to charge him. This motion was overruled by the court, to which decision of the court said defendants, and each of them, then and there excepted; and thereupon said defendants asked the court that said jury might be permitted to retire and consider whether they found the evidence in the case sufficient to charge said defendant, Granger; and if not, that the jury might find said Granger not guilty. And the defendants, Castle, Filkins and Phillips, each urged upon the court, as a reason for this course, that they desired to use said Granger as a witness for their defence if he should be acquitted, but the court overruled this application

and motion, to which decision the defendants, and each of them, then and there excepted.

After these motions were overruled, defendants then gave to the jury the following evidence, to wit, the depositions of the following witnesses: Charles W. Castle, Charles R. Parks, John D. Parkes, James M. Belden, Amos W. Peaslee, Samuel C. Barlow, Zebulon Kinzie, Mark Beaubien, David D. Loramar, Oscar Taylor, C. T. Coffal, Benjamin Rupert, which depositions were all taken ex parte without notice to the plaintiff, and without cross-examination.

The Deposition of Charles W. Castle.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Charles W. Castle; I am eighteen years of age; and live in the city of Springfield, Illinois.

Ques. 2d. How far do you live from the city of Chicago, Illinois?

Ans. I live about two hundred miles from the said city of Chicago, Illinois.

Ques. 3d. Are you acquainted with the parties to the above entitled suit; and how long, and where, have you known each of them?

Ans. I am acquainted with Edward F. Bullard, Joseph Filkins, Edward H. Castle, Elihu Granger, and J. P. Phillips. I have known the said Bullard for some sixteen months last passed, having seen him some ten or twelve times in the meantime; I have known Joseph Filkins for ten years past, and Edward H. Castle from my earliest infancy, and Elihu Granger about four years, and J. P. Phillips about one year. I have known Edward H. Castle, in the city of Chicago, Illinois, for ten years past. My acquaintance with the said Bullard, Filkins, Granger and Phillips, has been in the same city.

Ques. 4th. Do you know anything of the sale of a quantity of clothing, by the said E. F. Bullard, to one Edmund S. Castle, in the fall of eighteen hundred and fifty-five?

Ans. I know that Edward F. Bullard made a sale of clothing to Edmund S. Castle in the fall of eighteen hundred and fifty-five, in the city of Chicago, Illinois, at the house of Filkins, Phillips & Company, No. 100 Randolph street. In saying clothing, I mean a quantity of clothing.

Ques. 5th. At the time of the transaction referred to in your answer to the last interrogatory, what conversation, if any, took place between the said Edward F. Bullard and Edward H. Castle, touching the said transaction or sale?

Ans. Yes; Edward F. Bullard asked Edward H. Castle if he or the firm of Filkins, Phillips & Company would guarantee the payment of the purchase money for said quantity of cloths sold to the said Edmund S. Castle; and if so, what would be the charge for

such guaranty. Edward H. Castle replied, that neither he nor the said firm would guarantee such payment. Edward H. Castle further said to the said Bullard, if the latter was not satisfied with Edmund S. Castle's paper, that he had better go into the street and inquire about the said Edmund S. Castle's solvency, before he delivered the said quantity of cloths to the said E. S. Castle.

Ques. 6th. What did the said Bullard then do?

Ans. Bullard said nothing, but went out of the house into the street.

Ques. 7th. Did you afterwards hear Bullard say anything as to the sale of the goods to Edmund S. Castle?

Ans. I heard the said Bullard afterwards say, on his return into the house, that he had sold the goods to Edmund S. Castle.

Ques. 8th. What do you know of the invoice of the goods, and the shipment of the same?

Ans. I know that the goods were shipped to Dubuque, Iowa, to E. S. Castle's store, and the invoice of the goods amounted to twenty-five hundred or three thousand dollars, and part of the goods were shipped from Belvidere, Illinois.

Ques. 9th. Did Bullard write a letter referring to the said sale and goods; and if so, was the letter and the invoice in the same handwriting, and by whom did the letter purport to be signed?

Ans. The said Bullard wrote a letter, saying that part of the goods had been shipped from Belvidere, Illinois, to Dubuque, Iowa; and that letter and the invoice of the goods were in the same handwriting, and the letter was signed E. F. Bullard.

Ques. 10th. Did Col. J. P. Phillips and the said Edward F. Bullard have a conversation, also, about the transaction or sale referred to? and if so, state the same.

Ans. Yes; Col. J. P. Phillips stated to E. F. Bullard that the firm had nothing to do with the transaction. E. H. Castle had received the goods, paid the freight and charges, and unpacked and dried the goods, before he, Phillips, came into the firm as a partner; and stated that it was a personal matter of E. H. Castle's, and the firm made no charge, and he, Bullard, could pay E. H. Castle whatever he saw fit.

Ques. 11th. Do you know of a certain promissory note, purporting to be signed by E. S. Castle? and if so, state your knowledge of it.

Ans. Bullard wrote a note for one hundred and thirty-five dollars, and handed it to E. S. Castle, who signed it; and E. S. Castle handed it to Bullard, and Bullard handed it to E. H. Castle.

Ques. 12th. What do you know of an inventory of the store belonging to E. S. Castle, at Dububue, Iowa, taken by sheriff of Dubuque county, Iowa?

Ans. I assisted the sheriff to take the inventory at Dubuque, Iowa, and the money sent to Chicago, Illinois, to E. S. Castle.

The money on hand at Dubuque, and the goods invoiced in the store by the sheriff, as compared with the inventory of the goods sent to Dubuque, Iowa, showed a deficit of between six and eight thousand dollars.

CHARLES W. CASTLE.

Deposition of C. R. Park.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Charles R. Park; my age is thirty-seven years; I reside at Dunlieth, Jo Davis county, State of Illinois.

Ques 2. How far do you live from the city of Chicago, Illinois?

Ans. I live one hundred and eighty-seven miles from the city of Chicago.

Ques. 3d. Are you acquainted with the parties in the above entitled suit; if so, how long have you been acquainted with them, and where have you known each of them?

Ans. I am acquainted with the parties in the above entitled suit. I have known the said Bullard for some sixteen months last past. I have *have* known Joseph Filkins almost two years and a half last past, and I have known E. H. Castle for the last twenty-five years; I have known Elihu Granger about two years last past; I have known J. P. Phillips about fifteen months; I have known all of the parties in the city of Chicago, Illinois.

Ques. 4th. Do you know anything of the sale of a quantity of clothing by the said E. F. Bullard to one Edmund S. Castle in the fall of 1855?

Ans. I know that there was a sale of goods from E. F. Bullard to E. S. Castle in the fall of A. D. 1855, on the last of October or the first of November; this sale was made in the city of Chicago, at No. 100 Randolph street, at the office of Filkins, Phillips & Co. The sale consisted of ready-made clothing.

Ques. 5. At the time of the transaction referred to in your answer to the last interrogatory, what conversation, if any, took place between the said E. F. Bullard and Edward H. Castle, touching the said transaction or sale?

Ans. I heard Bullard ask E. H. Castle if he would guarantee the payment to him, Bullard, for the goods or the notes given by E. S. Castle to said Bullard for the said goods; E. H. Castle said to Bullard, in answer to the question, that they were both his personal friends, and he would not guarantee the notes or have anything whatever to do with the matter. I think E. H. Castle told Bullard that he could go out and inquire about the ability of E. S. Castle to pay, and satisfy himself about the matter. The foregoing answer contains the substance of the conversation that I heard between E. H. Castle and E. F. Bullard at the time the goods were sold.

Ques. 6th. What became of the goods to which you refer in your last answer?

Ans. The goods which Bullard sold to E. S. Castle I afterwards saw in E. S. Castle's store, in Dubuque, and saw the invoice of the goods at the same time.

Ques. 7th. Did Col. J. P. Phillips express any feeling to the said Bullard about selling the said goods at auction; if so, what was said between them at that time of sale?

Ans. At several times I heard Phillips express dissatisfaction, because Bullard sold the goods himself, and did not allow Filkins, Phillips & Co. to make the sale.

Ques. 8th. Do you know what amount of goods was put into the store of E. S. Castle, in Dubuque, in the fall and winter of A. D. 1855 and 1856? if so, please state that amount.

Ans. I saw bills in E. S. Castle's store, in Dubuque, showing that some ten or fifteen thousand dollars' worth of goods had come to the store.

Ques. 9th. Who had charge of the store of E. S. Castle, in Dubuque, as clerk and salesman?

Ans. Frederick Castle, son of E. S. Castle, had charge of the store in Dubuque.

Ques. 10th. If you know, please state how the said Frederick Castle conducted the sale of the goods in E. S. Castle's store in Dubuque.

Ans. The said E. S. Castle resided in Chicago, and did not give his personal attention to the store in Dubuque. I have often been into the store of E. S. Castle, in Dubuque, and frequently noticed that the said Frederick Castle was absent, and had left the care of the store with persons who might happen to be in at the time, having no interest in the store. And I have often seen him drunk, and so much intoxicated that he was not in a suitable condition to do business. The said Frederick Castle was in the habit of gambling, and using funds of the store for that purpose; and from investigation, at request of those interested, I found that the management of the store at Dubuque, by said Frederick Castle, was of the most reckless character.

Ques. 11th. State, if you know, what connection there was, or if there was any connection, at any time within the last three years, in business between the firm of Filkins, Phillips & Co., and E. S. Castle.

Ans. From a knowledge of the business of the firm of Filkins, Phillips & Co., and also that of E. S. Castle, I know that there was no connection in business between those parties during the last three years, except that E. H. Castle and Joseph Filkins sometimes endorsed for the said E. S. Castle.

C. R. PARK.

Deposition of John D. Park.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is John D. Park; my age is forty-one; my residence is Panola, Woodford county, State of Illinois; I am now stopping in Dubuque, State of Iowa, on the western side of the Mississippi river.

Ques. 2. How far do you reside from the city of Chicago, in the State of Illinois?

Ans. I reside about one hundred and fifty miles from Chicago.

Ques. 3. Are you acquainted with the parties to this suit; if so, how long have you known them, and where have you known them?

Ans. I am acquainted with the parties to this suit; I have known Bullard about a year and a half; I have known the parties defendants for the last two years; I have known them all in the city of Chicago, State of Illinois.

Ques. 4th. Are you acquainted with E. S. Castle; if so, how long have you known him, and where have you known him?

Ans. I am acquainted with E. S. Castle; I have known him for the last twenty years, and last knew him in the city of Chicago, Illinois.

Ques. 5th. Do you know anything about a sale of goods from E. F. Bullard to E. S. Castle, some time in Nov., A. D. 1855? if so, state all the particulars within your knowledge in relation thereto.

Ans. I saw a stock of goods, consisting of ready-made clothing, in the store of Filkins, Phillips & Co., in the city of Chicago, in the fall of 1855; and afterwards I saw the same goods, and the boxes that contained them, in E. S. Castle's store, in Dubuque; and I also saw the invoice of the same goods in E. S. Castle's store, in Dubuque; that invoice showed a sale of the goods from E. F. Bullard to E. S. Castle, and was in the handwriting of the said Bullard, and signed by him; I also saw a letter from E. F. Bullard addressed to E. S. Castle, at Dubuque, stating that a part of the above named goods were shipped from Belvidere to Dubuque.

Ques. 6th. Where is the letter to which you refer in your last answer?

Ans. The last that I saw it, it was in E. S. Castle's store, at Dubuque, with some other letters and paper belonging to the store; afterwards I searched for the letter, and could not find it, nor could I find the other papers which were with it.

Ques. 7th. Did you hear E. S. Castle say anything about the sale of the goods to him by Bullard? if so, state what he said.

Ans.

Ques. 8th. Do you know what amount of cash E. S. Castle received from the sale of goods from his store, in Dubuque? if so, please state the amount.

Ans. He received about two thousand dollars.

Ques. 9th. Do you know what amount of goods came into the store of E. S. Castle, in Dubuque? if so, please state amount and your means of knowledge.

Ans. I examined the invoice of the goods that came into E. S. Castle's store, in Dubuque, and added them up, and found the same to be about twenty-five thousand dollars.

Ques. 10th. Did you ever live in Chicago?

Ans. I did.

Ques. 11th. What was your business in Chicago?

Ans. I was book-keeper for Filkins, Phillips & Co. in the summer and fall of A. D. 1855.

Ques. 12th. Was there any business connection in the summer and fall of A. D. 1855 between the firm of Filkins, Phillips & Co. and E. S. Castle?

Ans. There was none; if there had been I must have known it, my relation to them was such.

Ques. 13th. Do you know whether Filkins, Phillips & Co. or Filkins, Castle & Co. ever sold any goods belonging to E. S. Castle previous to May, A. D. 1856?

Ans. I know that they did not.

JOHN D. PARK.

Deposition of Capt. James M. Belden.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is James M. Belden; I am twenty-six years old; I reside in Dubuque, State of Iowa.

Ques. 2d. How far do you live from the city of Chicago?

Ans. One hundred and eighty-seven miles from Chicago, Illinois.

Ques. 3d. Are you acquainted with the parties to this suit?

Ans. I am acquainted with the parties to this suit. I knew them in Chicago.

Ques. 4th. Did you know E. S. Castle, in Dubuque; if so, what was his business there?

Ans. E. S. Castle was a merchant in Dubuque; his store was on Main street.

Ques. 5th. Who had charge of the said E. S. Castle's store, in Dubuque?

Ans. Frederick Castle had charge of the store; E. S. Castle was attending to his business in Chicago, and did not give his personal attention to the store in Dubuque.

Ques. 6th. How did the said Frederick Castle conduct the business of the store in Dubuque?

Ans. The said Frederick Castle neglected his business, and often left the store in the care of persons having no interest therein. He spent much of his time away from the store, drinking, gambling, driving fast horses, and whoring, for all of which he used the funds of the store, for he had no other means of paying his expenses. The said Frederick Castle conducted the business of the store in a most reckless manner. All these facts I know from careful observation and particular attention to the business of the store.

I have known the said Frederick Castle to take goods to the auction rooms for sale. I have often noticed that the stock would be greatly replenished and in a very short time very much reduced, and I know that the goods frequently went off faster than they could have done in the ordinary course in business; several disreputable persons were in the habit of staying in the store.

JAMES M. BELDEN.

Deposition of Amos W. Peaslee.

Ques. 1st. What is your name, age, and residence?

Ans. My name is Amos W. Peaslee, my age is twenty-nine years, and I reside at Dubuque, State of Iowa.

Ques. 2d. How far do you reside from Chicago, Illinois?

Ans. I reside from Chicago one hundred and eighty-seven miles.

Ques. 3d. Do you know Frederick Castle; if you know him, how long have you known him, and where did you know him, and what was his business, and what attention did he give to his business in Dubuque?

Ans. I know Frederick Castle. I have known him from the time that he came to Dubuque, some time in July, A. D. 1855. He boarded at my house. I knew him in Dubuque, Iowa. He was clerk, and had charge of the store of E. S. Castle in Dubuque. I think that he did not give much attention to his business, for the reason that he was intoxicated and spreeing a large part of the time. My porter frequently carried him up stairs when he was drunk. I was frequently at the store, and I think that the business was conducted in a very loose and reckless manner.

Ques. 4th. Did Frederick Castle say anything to you about purchasing land or lots with any of the goods in the store; if he did, what did he say?

Ans. He stated to me that he had traded off the balance of his stock of clothing to Mr. Hall for some city lots in Dubuque.

AMOS H. PEASLEE.

Deposition of Samuel J. Barlow.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Samuel J. Barlow; my age is twenty-nine years; I reside in the city of Dubuque, and State of Iowa.

Ques. 2d. How far do you reside from Chicago, Illinois?

Ans. I reside one hundred and eighty-seven miles from Chicago.

Ques. 3d. Do you know Frederick Castle; if so, state how long you have known him, where you have known him, what was his business, and how did he conduct his business?

Ans. I know Frederick Castle, and have known him about one year and a half. I knew him in the city of Dubuque in the sum-

mer and autumn of A. D. 1855, and the winter of 1856. He had charge of E. S. Castle's store in Dubuque.

I know that he was drunk a large part of the time; that he spent a great deal of money drinking and gambling. I think while he was in Dubuque he must have spent several thousand dollars in that way.

I also know that he must have neglected his business in the store from the foregoing statement.

S. J. BARLOW.

Deposition of Zebulon Kinsey.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Zebulon Kinsey; my age is forty-six; and my residence the city of Dubuque, State of Iowa.

Ques. 2d. How far do you reside from Chicago, Illinois?

Ans. About one hundred and eighty-seven miles.

Ques. 3. Do you know Frederick Castle; if so, how long have you known him, where have you known him, and what was his business, and how did he conduct his business?

Ans. I know Frederick Castle. I have known him since July, A. D. 1855. I knew him in Dubuque. He had charge of E. S. Castle's store in Dubuque. I was often in the store, and have no hesitancy in saying that the business of the store was conducted by him in a most reckless manner. I have often seen him intoxicated, and about the streets on a spree, and judging from his conduct he must have spent a great deal of money in Dubuque. I had business which induced me to go into the store frequently.

ZEBULON KINSEY.

Deposition of Mark Beaubien, Jr.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Mark Beaubien, jr.; my age is thirty-seven years; and my place of residence in Dubuque, Iowa.

Ques. 2d. How far do you reside from Chicago, Illinois?

Ans. I reside about one hundred and eighty-seven miles from the city of Chicago.

Ques. 3d. Do you know Frederick Castle; if so, how long have you known him, where have you known him, and what was his business, and how did he conduct his business in Dubuque?

Ans. I know Frederick Castle. I have known him since July, A. D. 1855. I knew him in Dubuque. He had charge of E. S. Castle's store in Dubuque. He neglected the store. He was drunk more or less all the time while he was in Dubuque. He drove fast horses, and was on a spree nearly all the time; and he must have spent a great deal of money while he had charge of the store in Dubuque. From his conduct it could not been otherwise. He conducted as recklessly as a man could.

MARK BEAUBIEN, JR.

Deposition of David D. Loramer.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is David D. Loramer; my age is thirty-two; I reside in the city of Dubuque.

Ques. 2d. How far do you live from Chicago?

Ans. I live about one hundred and eighty-seven miles from Chicago, Illinois.

Ques. 3d. Do you know Frederick Castle; if so, how long have you known him, where have you known him, what was his business, and how did he conduct his business in Dubuque?

Ans. I know Frederick Castle. I have known him since July, A. D. 1855. I knew him in Dubuque. He had charge of E. S. Castle's store in Dubuque. He conducted the business of the store in a most reckless manner. He was drunk a great deal of the time. He drove fast horses, and spreed it continually. He must have spent a large sum of money while in Dubuque.

D. D. LORAMER.

Deposition of Oscar Taylor.

Question 1st. What is your name, age, and residence?

Ans. My name is Oscar Taylor; my age twenty-four years; and my residence is in the city of Dubuque.

Question 2d. How far do you reside from the city of Chicago, State of Illinois?

Ans. I reside one hundred and eighty-seven miles from the city of Chicago.

Question 3d. Do you know the parties to this suit?

Ans. I know the parties defendant's but not the plaintiff.

Question 4th. Do you know E. S. Castle; if so, when and where did you know him?

Ans. I know E. S. Castle. I saw him Dubuque some time in the fall of A. D. 1855.

Question 5th. What was E. S. Castle's business in Dubuque?

Ans. He had had a store of merchandise in the city of Dubuque in the summer and fall of A. D. 1855, and the winter of A. D. 1856.

Question 6th. State if you know what amount of goods in all come into the store of E. S. Castle in Dubuque?

Ans. From what I know of the inventories, and what I saw of the goods in the store, I think there must have been between twenty and thirty thousand dollars in all, together with what the parties told me about the amount.

Question 7th. Who had charge of said E. S. Castle's store in Dubuque?

Ans. A son of E. S. Castle had charge of the store. They called him Frederick Castle.

Question 8th. Do you know how the business of the store was closed up? if so, please state all the particulars within your knowledge.

Ans. I know how the business was closed in the store. Two executions—one for the sum of about $1,800, and the other for about six thousand, in favor of Joseph Filkins against the said E. S. Castle—*was* placed in my hands as deputy sheriff of Dubuque county, some time in the month of Nov., A. D. 1855; by virtue of which executions I levied upon all the goods in the store, and sold upon said executions all of the goods that I found in the store, and returned the same with my acts thereon to the clerk of the district court of Dubuque county, from whence they issued. The goods, at the time of levy, amounted, as per appraisal, to about five thousand dollars, as near as I now can recollect. The amount received over and above the expenses of sale, and accounted for upon the executions, was about twenty-six hundred dollars.

Question 9th. Did you sell all of the goods that you found in the store?

Ans. I did; I also sold some goods which had been left at the auction-room by those in charge of the store, for sale.

Question 10th. Do you know where the executions above described by you, and upon which you sold the goods, now are? Please state all that you know about them.

Ans. I do not know where they now are, but I do know that I did return them to the clerk's office, with my doings in full endorsed thereon, since which I have not seen them; I have to-day examined the files of the court where I left the executions and rereturns, and am unable to find them, and can give no further information in relation to them?

Question 11th. What do you know, if anything, about any disposition of goods in the store, other than those upon which you levied?

Ans. I learned from letters that I saw signed by Frederick Castle, addressed to *Varnn* Castle, that a disposition had been and was then being made of goods belonging to E. S. Castle, in the store above mentioned, which, for the interest and reputation of the said Frederick and *Varnn* Castle, ought not to be made public. I managed the sale under the direction of Col. Joseph Filkins, in a manner to obtain the largest amount of cash possible for said goods, from two considerations: first, to discharge my duty faithfully as an officer; and secondly, I did so at the special request of Joseph Filkins.

OSCAR TAYLOR.

Deposition of C. J. Coffall.

Question 1st. What is your name, age, and residence?

Ans. My name is C. J. Coffall; my age is thirty-one years; my residence is Dubuque, State of Iowa.

Question 2d. How far do you reside from the city of Chicago, State of Illinois?

Ans. I reside one hundred and eighty-seven miles from the city of Chicago.

Question 3d. Do you know Frederick Castle; if so, how long have you known him, when did you know him, and what was his occupation?

Ans. I know Frederick Castle, and knew him in the city of Dubuque, in the summer and fall of A. D. 1855, and winter of A. D. 1856; he had charge of a store of merchandise in the city of Dubuque for E. S. Castle; he had charge of said store while I knew him in Dubuque.

Question 4th. What was your business in Dubuque?

Ans. I kept an auction store on Main street.

Question 5th. Did you at any time sell goods at auction, that came from E. S. Castle's store in Dubuque? if so, please state what amount of goods you sold, and at whose request you sold them, and to whom you paid the proceeds of said sale.

Ans. In the fall of A. D. 1855, and in the winter of A. D. 1856, Frederick Castle and his brother brought goods at different times to my auction store from the store of E. S. Castle in Dubuque. I sold goods as above to the amount of over two thousand dollars, to obtain which amount the goods were sold at a great sacrifice, and paid the money over to the said Frederick Castle and his brother. Further, I have no knowledge of the goods in said store.

CHAS. JNO. COFFALL.

Deposition of Benjamin Rupert.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Benjamin Rupert; my age fifty-two years; my residence is in the city of Dubuque, State of Iowa; my occupation is clerk of the district court for Dubuque county, in the State aforesaid.

Question 2d. How far do you reside from the city of Chicago, in the State of Illinois?

Ans. About one hundred and eighty-seven miles.

Question 3d. State, if you know, where the executions are which issued from your office, as clerk of the district court aforesaid, in favor of Joseph Filkins, and against E. S. Castle, on the 27th day of November, A. D. 1855.

Ans. I issued the above described executions on the 27th day of Nov., A. D. 1855, and on the same day delivered them to the sheriff, which executions I have not since seen; I have searched the files of the court, and can state that they cannot be found.

Question 4th. State, if you know, if the sheriff's return, with an inventory of the goods levied upon, is now to be found in your office.

Ans. They are not to be found in the office.

BENJAMIN RUPERT.

After the reading of the depositions defendants produced as a witness Mr. Loomsbury, who, being duly sworn, testified in his examination in chief, in substance, that in August, 1855, witness was an insurance agent, and in that capacity examined the stock of E. S. Castle in his store, on Lake street, Chicago, with a view to effecting a policy of insurance upon it; that from that valuation witness supposed the stock then on hand was worth from $4,000 to $5,000. And the defendant also produced as a witness Samuel D. Towle, who, being duly sworn, testified in substance, that about the 1st October, 1855, witness assisted E. H. Castle in unpacking a quantity of clothing at 100 Randolph street. They were in ordinary packing-boxes; they were damp, in a damaged condition; witness helped dry them. Witness was here shown the bill of goods copied above, and to which the letter from Bullard to Adams was attached, and said he thought this bill was present when he examined the goods as aforesaid. Witness said he did not know whether Phillips came into the firm before the 8th of November; that Phillips was not a member of the firm at the time these goods were received, nor at the time they were dried; Phillips came there after witness left the establishment. When witness was there he was engaged as an employee, with an interest in the profits as sort of partner.

Defendants offered to prove by this witness, that whilst *and* the goods were in possession of E. H. Castle, the latter said that he had not the goods on sale, but was to take care of them for the owner, a man who lived in New York. To this evidence plaintiff objected. The court sustained the objection, and refused to admit the testimony, and decided that it was incompetent, to which decision of the court the defendants and each of them then and there excepted.

Defendants also offered to prove by this witness that whilst the goods were in the possession of E. H. Castle, in the month of October, 1855, at 100 Randolph street, several different persons applied to E. H. Castle to purchase said goods, and that in reply to all such applications, said E. H. Castle, being thus in possession of said goods, replied that he held them merely in store for the owner and not for sale; to which evidence thus offered plaintiff objected, and the court sustained the objection, and refused to admit the testimony thus offered; to which decision of the court the defendants, and each of them, then and there excepted.

And the same witness further testified that he was present when Mr. Adams brought said bill of goods, with the letter of plaintiff attached thereto, and that Adams at that time said he wanted the goods examined, as they might be damp.

Defendant here read in evidence the aforesaid letter from Bullard to William H. Adams, attached to said bill of goods, a copy of which is given above.

Defendants then gave in evidence the record of a judgment in the

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Cook county court of common pleas in favor of Wm. Sowerby, and against E. S. Castle, for $875, and execution thereof, which said record is as follows, to wit:

Declaration.

STATE OF ILLINOIS,
County of Cook, ss.

The Cook County Court of Common Pleas, of the November vacation term, in the year of our Lord one thousand eight hundred and fifty-five.

William Sowerby, (the plaintiff in this suit,) by George L. Taylor, his attorney, complains of Edmond S. Castle (the defendant in this suit) of a plea of trespass on the case upon promises.

For that whereas the said defendant, on the twenty-sixth day of April, in the year one thousand eight hundred and fifty-five, at Chicago, that is to say at the county of Cook and State of Illinois aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said plaintiff, by which said note the said defendant promised to pay to the said plaintiff, by the name of William Sowerby, or to his order, the sum of forty-seven $\frac{50}{100}$ dollars, six months after the date thereof, with interest, after maturity, at two per cent. per annum, being for money borrowed, for value received.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas also the said defendant, on the said twenty-sixth day of April, in the year one thousand eight hundred and fifty-five, at Chicago aforesaid, that is to say at the county of Cook and State of Illinois aforesaid, made a certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said last mentioned note to the said plaintiff, by which said last mentioned note the said defendant promised to pay to the said plaintiff, by the name of William Sowerby, or to his order, the sum of forty-seven $\frac{50}{100}$ dollars nine months after the date thereof, with interest, after maturity, at ten per centum per annum, being for money borrowed, for value received; by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said last mentioned note

specified, according to the tenor and effect thereof; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place last aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said last mentioned note specified, according to the tenor and effect thereof.

And whereas also the said defendant, on the said twenty-sixth day of April, in the year one thousand eight hundred and fifty-five, at Chicago aforesaid, that is to say at the county of Cook and State of Illinois aforesaid, made a certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said last mentioned note to the said plaintiff.

By which said last mentioned note the said defendant promised to pay to the said plaintiff, by the name of William Sowerby, or to his order, the sum of seven hundred and forty-seven $\frac{50}{100}$ dollars twelve months after the date thereof, with interest, after maturity, at ten per cent. per annum, being for money borrowed, for value received.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said last mentioned note specified, according to the tenor and effect of the said last mentioned note; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised, well and truly to pay unto the said plaintiff the said sum of money in the said last mentioned note specified, according to the tenor and effect of the said last mentioned note.

And whereas also the said defendant afterwards, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-five, at the place aforesaid, was indebted to the said plaintiff in the sum of eight hundred and forty-two $\frac{50}{100}$ dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received, to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards

requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of eight hundred and forty-two $\frac{50}{100}$ dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested:

Nevertheless, the said defendant (although often requested, &c., to wit, on the day when the said note became due and payable, according to the tenor and effect thereof, and oftentimes since, to wit, at the place aforesaid) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof, to the said plaintiff the said defendant hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of one thousand dollars; and therefore the said plaintiff brings suit, &c.

GEORGE L. TAYLOR,
Plaintiff's Attorney.

Note and Warrant of Attorney.

$47 50. CHICAGO, *26th April*, 1855.

Six months after date, for value received, I promise to pay to William Sowerby, or order, the sum of forty-seven $\frac{50}{100}$ dollars, with interest after maturity, at ten per cent. per annum, being for money borrowed.

E. S. CASTLE.

Know all men by these presents, that whereas the subscriber, Edmund S. Castle, is justly indebted to William Sowerby upon a certain promissory note bearing even date herewith, for the sum of forty-seven dollars and fifty cents, made payable to the said William Sowerby or order, and due six months after date:

Now, therefore, in consideration of the premises and of the sum of one dollar to me in hand paid by the said William Sowerby, the receipt whereof is hereby acknowledged, I do hereby make, constitute, and appoint George L. Taylor, or any attorney in any court of record, to be my true and lawful attorney irrevocably, for me and in my name, place and stead, to appear before any justice of

the peace, or in any court of record, in term time or vacation, in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process and confess a judgment in favor of the said William Sowerby, his executors or administrators, or his or their assignee or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, with interest thereon, together with costs, also for ten dollars usual attorney's fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed, to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal this twenty-sixth day of April, A. D. 1855.

E. S. CASTLE. [SEAL.]

In the Cook County Court of Common Pleas.

WILLIAM SOWERBY }
vs. }
EDMUND S. CASTLE. }

STATE OF ILLINOIS, *County of Cook.*

George L. Taylor, being duly sworn, saith that he is well acquainted with the handwriting of Edmund S. Castle in the within warrant of attorney named, and that the signature "E. S. Castle," appended thereto, is of the proper handwriting of the said Edmund S. Castle.

GEORGE L. TAYLOR.

Subscribed and sworn to before me, this 10th day of November, A. D. 1855. W. KIMBALL, *Clerk.*

Note and Warrant of Attorney.

$47 50. CHICAGO, 26*th April*, 1855.

Nine months after date, for value received, I promise to pay to William Sowerby, or order, the sum of forty-seven $\frac{50}{100}$ dollars, with interest after maturity, at ten per cent. per annum, being for money borrowed.

E. S. CASTLE.

Know all men by these presents, that whereas the subscriber, Edmund S. Castle, is justly indebted to William Sowerby upon a certain promissory note, bearing even date herewith, for the sum

of forty-seven dollars and fifty cents, made payable to the said William Sowerby or order, and due nine months :

Now, therefore, in consideration of the premises, and of the sum of one dollar to me in hand paid by the said William Sowerby, the receipt whereof is hereby acknowledged, I do hereby make, constitute, and appoint George L. Taylor, or any attorney in any court of record, to be my true and lawful attorney irrevocably, for me and in my name, place and stead, to appear before any justice of the peace, or in any court of record in term time or vocation, in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a judgment in favor of the said William Sowerby, his executors or administrators, or his or their assignee or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, with interest thereon, together with costs, also for ten dollars usual attorney fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of said judgment or issuing the execution thereon, and also to consent to immediate execution upon such judgment, hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal this twenty-sixth day of April, A. D. 1855.

E. S. CASTLE. [SEAL.]

In the Cook County Court of Common Pleas.

WILLIAM SOWERBY }
vs. }
EDMUND S. CASTLE. }

STATE OF ILLINOIS, *County of Cook.*

George L. Taylor, being duly sworn, saith that he is well acquainted with the handwriting of Edmund S. Castle, in the within written warrant of attorney named, and that the signature "E. S. Castle," appended thereto, is of the proper handwriting of the said Edmund S. Castle.

GEORGE L. TAYLOR.

Subscribed and sworn to before me, this 10th day of November, A. D. 1855.

W. KIMBALL, *Clerk.*

Note and Warrant of Attorney.

$747 50. CHICAGO, 26 *April*, 1855.

Twelve months after date, for value received, I promise to pay to

William Sowerby, or order, the sum of seven hundred and forty-seven $\frac{50}{100}$ dollars, with interest after maturity at ten per cent. per annum, being for money borrowed.

E. S. CASTLE.

Know all men by these presents, that whereas the subscriber, Edmund S. Castle, is justly indebted to William Sowerby, upon a certain promissory note bearing even date herewith, for the sum of seven hundred and forty-seven dollars and fifty cents, made payable to the said William Sowerby or order, and due twelve months after date:

Now, therefore, in consideration of the premises, and of the sum of one dollar to me in hand paid by the said William Sowerby, the receipt whereof is hereby acknowledged, I do hereby make, constitute, and appoint George L. Taylor, or any attorney in any court of record, to be my true and lawful attorney irrevocably, for me and in my name, place and stead, to appear before any justice of the peace, or in any court of record in term time or vacation, in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a judgment in favor of the said William Sowerby, his executors or administrators, or his or their assignee or assignees upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note, with interest thereon, together with costs, also for twenty-five dollars usual attorney fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment or issuing the execution thereon, and also to consent to immediate execution upon such judgment, hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal, this twenty-sixth day of April, A. D. 1855.

E. S. CASTLE. [SEAL.]

In the Cook County Court of Common Pleas.

WILLIAM SOWERBY
vs.
EDMUND S. CASTLE.

STATE OF ILLINOIS, *County of Cook.*

George L. Taylor, being duly sworn, saith that he is well acquainted with the handwriting of Edmund S. Castle, in the within written warrant of attorney named, and that the signature "E. S.

Castle," appended thereto, is of the proper handwriting of the said Edmund S. Castle.

GEORGE L. TAYLOR.

Subscribed and sworn before me, this 10th day of November, A. D. 1855.

WALTER KIMBALL, *Clerk.*

Cognovit.

Cook County Court of Common Pleas, in vacation after November Term, A. D. 1855.

EDMUND S. CASTLE ads. WILLIAM SOWERBY. } Cognovit.

And the said Edmund S. Castle, defendant in the above entitled suit, by Edward Martin, his attorney, comes and defends the wrong and injury, when, &c., and waives service of process, and says that he cannot deny the action of the said plaintiff, nor but that he, the defendant, did undertake and promise, in manner and form as the said plaintiff hath thereof above complained against him, nor but that the said plaintiff hath sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of forty-five dollars for his reasonable attorney's fees for entering up this judgment, over and above his other costs and charges by him about his suit in this behalf expended, to eight hundred and eighty-seven dollars and fifty cents; and the said defendant further agrees that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby releases all errors that may intervene in entereng up the same.

EDWARD MARTIN,
Defendant's Attorney.

Endorsed: Filed Nov. 10th, 1855.

W. KIMBALL, *Clerk.*

WILLIAM SOWERBY vs. EDMUND S. CASTLE. } Confession.

This day comes the said plaintiff by G. L. Taylor, his attorney, and files herein his declaration of a plea of trespass on the case upon promises. And thereupon also comes the said defendant by Edward Martin, his attorney in fact, who files herein his warrant of attorney; the execution of which being duly proved, and also his cognovit confessing the action of the said plaintiff against him, and that he has sustained damages by occasion of the premises to the sum of eight hundred and eighty-seven dollars and fifty cents:

Therefore it is considered that the said plaintiff do have and re-

cover of the said defendant his damages of ($887 50) eight hundred and eighty-seven dollars and fifty cents, in form aforesaid confessed, and also his costs and charges by him in this behalf expended, and have execution therefor.

Execution.

STATE OF ILLINOIS,
County of Cook, ss.

The people of the State of Illinois to the Sheriff of said county, greeting:

We command you that of the lands and tenements, goods and chattels of Edmund S. Castle, defendant, in your county, you cause to be made the sum of eight hundred and eighty-seven dollars and fifty cents, which William Sowerby, plaintiff, lately in the Cook county court of common pleas, at a term thereof begun and held at Chicago, in said county, on the first Monday of November instant, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff for his damages; and also the further sum of five dollars and twenty cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid; and make return of said writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, Walter Kimball, clerk of our said court, and the seal thereof, at Chicago, in said county, this 10th day of November, A. D. 1855.

[SEAL.]

WALTER KIMBALL, *Clerk.*

Return.

By virtue of the annexed writ of execution, No. 5,204, and three others issued from the same court—one 5,203, in favor of Bernard Mayer and against George Hatch and Edmund S. Castle, dated 10th November, 1855; one, No. 5,205, in favor of George B. Repley and William D. Judson, and against George Hatch and Edmund S. Castle, dated 12th November, 1855; and the other, No. 5,438, in favor of Philander Hickox, and against Edmund S. Castle, dated 19th January, 1856—I did, on the 5th February, A. D. 1856, levy upon "98 satchels, lot trunk trimmings, 185 trunks, 80 valises, lot strap-iron, 75 common trunks, 71 doz. trunk locks, 975 prs. shoes, 300 prs. boots, and lot sundries." And on the 20th day of April, 1856, between the hours of nine in the morning and the setting of the sun of the same day, at number one hundred Randolph street, in Chicago, in Cook county, (the time and place of sale having been duly advertised according to law,) I did sell at public vendue to the highest and best bidder at said sale, the

property levied upon as aforesaid, for the sum of eleven hundred twenty-two dollars and sixty-nine cents, (1,122 69.)

And after deducting my fees, etc., on execution.....	$20 87
And the cost and expense of keeping property.....	143 50
I have paid to plaintiff in the annexed execution.....	918 31
And applied to balance on execution No. 5,203.....	40 01
	$1,122 69

And I return this annexed execution satisfied in full.

IRA SNOW,

Deputy of the late James Andrew, Sheriff, deceased.

STATE OF ILLINOIS,
County of Cook, ss.

I, Walter Kimball, clerk of Cook county court of common pleas, in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the order of judgment, the writ of fieri facias, and the sheriff's return thereon endorsed, in the case in which William Sowerby is plaintiff and Edmund S. Castle defendant.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Chicago, in said county, this 30th day of December, A. D. 1857.

[SEAL.]

WALTER KIMBALL, *Clerk.*

Whereas, on the tenth day of November, A. D. 1855, in the Cook county court of common pleas, in the county of Cook and State of Illinois, in the vacation November term thereof, at the suit of the undersigned, William Sowerby, against one Edmund S. Castle, a certain judgment was entered up and rendered in favor of the said William Sowerby and against the said Edmund S. Castle, for the sum of eight hundred and eighty-seven dollars and fifty cents damages, besides six dollars and fifty cents costs of suit, making in all the sum of eight hundred and ninety-four dollars; and whereas, on the tenth day of December, A. D. 1855, the said Edmund S. Castle filed his bill of complaint on the chancery side of the circuit court of said Cook county, in the State aforesaid, to enjoin the collection of said judgment, and a writ of injunction was thereupon issued accordingly; and whereas the said Edmund S. Castle has this day stipulated and agreed with the said William Sowerby to procure the said bill to be dismissed, and the said injunction to be dissolved by the said circuit court:

Now these presents witness, that for and in consideration of the sum of five hundred dollars to the said William Sowerby this day paid by Joseph Filkins, of the city of Chicago, county of Cook and State of Illinois aforesaid, the receipt whereof is hereby confessed,

he, the said William Sowerby, for himself, his heirs, executors and administrators, hereby covenants and agrees, to and with the said Joseph Filkins, his heirs, executors, administrators and assigns, that immediately upon the dismissal of the said bill of complaint, and the dissolution of the said writ of injunction, the same respectively to be so dismissed and dissolved by and at the costs and charges of the said Edmund S. Castle or of the said Joseph Filkins, he, the said William Sowerby, his executors or administrators, shall and will, upon the application of the said Joseph Filkins, his executors, administrators and assigns, but at the costs and charges of the said William Sowerby, his executors or administrators, by all legal and proper ways, means and assurances in the law, assign, transfer, and set over into the said Joseph Filkins, his executors, administrators and assigns, the said herein before recited judgment of the Cook county court of common pleas, and all benefit and advantage thereof, and all right and title to the moneys to be recovered thereunder, by virtue of a certain execution thereon issued out of said last mentioned court, on the said tenth day of November, A. D. 1855; and for more effectually enabling the said Joseph Filkins, his executors, administrators or assigns, to collect the amount of said judgment, he, the said William Sowerby, hereby further agrees, immediately upon the dismissal of the said bill and dissolution of the said injunction as aforesaid, to constitute and appoint the said Joseph Filkins his lawful attorney, irrevocable, for him and in his name, to receive and receipt for the moneys payable under and by virtue of the said judgment and execution, and for such purpose to do and execute all legal, proper, and necessary acts and deeds.

As witness the hand and seal of the said William Sowerby, this twentieth day of March, A. D. 1856.

WILLIAM SOWERBY. [SEAL.]

Endorsed: Filed Feb'y 2d, 1857.

W. KIMBALL, *Cl'k.*

And the defendants also produced as a witness Elijah F. Barker, who being duly sworn, testified, in substance, that on the 1st April, 1855, he became a member of the firm of Filkins, Runyan & Barker, and continued in that firm until some time in November, 1856. That he had charge of the books and financial affairs of said firm. That E. S. Castle had dealt with said firm. That in November, 1855, said E. S. Castle was in debt to said firm $418. That they trusted him from time to time, from June, 1855, and endorsed his paper frequently until some time in January, 1856. That he always paid his account with them, and his notes and drafts with which said firm had to do, until some time in January, 1856, when a draft for $750, which said firm had endorsed for him, came back on them protested. This was his first default with

them. That in December, 1855, said firm bought of Colby three notes of E. S. Castle to the amount of $1,200, dated December 4th, 1855, and gave Colby hardware for said notes. That the whole purchase by E. S. Castle of Colby was $3,000. That said firm, in the course of their dealings, endorsed for E. S. Castle, drafts on Dubuque to the amount of $2,900, of which $1,900 were paid by E. S. Castle, and $1,000 of which went to protest, but no draft was dishonored till after 8th January, 1856. Witness further stated that on the 15th day of August, A. D. 1855, he went to the place of business of E. S. Castle to inform himself, for the purposes of the business of the firm, as to E. S. Castle's responsibility. He found him in possession of the stock of goods amounting to some $4,000 or $5,000; and that on suggestion of witness E. S. Castle went to Mr. Lounsbury to take out a policy, and took out a policy of insurance for $2,000. Witness had been 30 years a hardware merchant, and not particularly experienced in the matter of boots and shoes, and trunks. That witness had a conversation at that time with E. S. Castle, as to the condition of his affairs, which witness repeated to his partner, defendant Filkins, on the same day, which was, that E. S. Castle stated his stock of goods was from $5,000 to $6,000. That he had an interest of one half of 70 or 80 cows. That he owned a lease of some property on the west side, and that he owned some other property. The two pieces brought in from $1,000 to $1,200 a year. That he had some $3,000 or $4,000 cash capital in his trunk business, and that he was worth from $6,000 to $8,000. That his trunk business was very profitable, and yielded at wholesale a profit of 30 per cent., and at retail of 50 per cent., and that witness believed this statement to be true. Witness further testified, that he thought that E. S. Castle's standing was good at this time, but is not sure that it was in the fall of 1855. Witness got his impressions on that subject chiefly from conversations with Filkins, whilst testifying on the subject of the dealings of his firm with E. S. Castle. Witness held in his hand their account current, which he said was correctly taken from the books of that firm, and which, by consent of parties, was read to the jury as follows:

DR. *Mr. E. S. Castle in acc't with Filkins, Runyon & Barker.* CR.

1855.			1855.		
March	To Mdse	5 58	March	By Mdse	5 00
April	Do	16 50	April	Do	1 50
May	Do	7 57	July	Cash from Murch & Bro	22 50
June	Do	227 20		Deduction on iron damaged	10 00
July	Do	271 09	Aug.	Mdse	28 34

ACCOUNT—Continued.

1855.					
Aug. 2	Do	210 52		Joseph Filkins	10 00
				Note, June 18, '55, 4 mos	181 64
				Note, July 7, '55, 4 mos	268 96
				Note, Aug. 2, '55, 4 mos	210 52
		738 46			738 46
1855.			1855.		
July	To Mdse	2 69	Aug.	By Mdse	23 97
Aug.	Do	18 48	Sep. 12	Do	8 00
Sept.	Do	9 58	Oct. 11	Note, Oct. 6, '55, 4 mos	115 45
Oct.	Do 115 45				
	Do 30 80				
		146 25	Dec. 15	Mdse	3 00
			1856.		
Nov.	Do	31 10	Jan. 2	Note, Dec. 20, '55, 4 mos	121 81
Dec.	Do	140 70	4	Joseph Filkins	5 00
			4	Cash	69 57
			4	Mdse	2 00
		348 80			348 80
1856.			1855.		
Jan.	To Mdse	22 09	Dec. 20	By cash	602 50
1855.			1856.		
Dec. 24	Cash	375 00	Jan. 3	Do	287 00
29	Do	80 00		Balance	2,271 87
1856.					
Jan. 2	Do	90 00			
4	Do., on acc't	70 45			
5	Do	40 00			
8	Do., paid draft protested	751 25			
30	Do. do	302 25			
	Note due Feb. 9, '56	115 45			
	Do. April 23, '56	121 81			
	The following notes, taken from O. V. Colby, Dec'r 24, '55:				
	Note due May 4, '56	397 69			
	Do. June 4, '56	397 69			
	Do. July 4, '56	397 69			
		3,161 37			3,161 37
	Balance due F. R. & B	2,271 87			

We endorsed the following drafts, drawn by E. S. Castle on Dubuque, and they were paid at Dubuque:

Due Nov. 12, '55.....	$300 00
Due Nov. 21, '55.....	200 00
Nov. 24, '55—10 days—due Dec. 7, '55.....	500 00
Dec. 3, '55—10 days—due Dec. 16, '55.....	650 00
Dec. 5, '55—10 days—due Dec. 18, '55.....	100 00
Dec. 10, '55—10 days—due Dec. 23, '55.....	150 00
	$1,900 00

Chicago, April 28th, 1856.

This witness further testified, that John D. Park went to Dubuque, from Chicago, from 1 to 10 Nov., 1855, as near as he could recollect; that Park & Castle were relations—Charles H. Castle, a son of E. H. Castle, and E. H. Castle and Granger relations. There was a large purchase made by E. S. Castle, of Wheelock & Daniels, in summer of 1855—but whether they were there in his store Aug. 15, 1855, he could not say—of boots and shoes. E. S. Castle's stock was seven-eighths in trunks and materials for trunks—large portion of it worked up. Some time in November, 1855, something occurred that affected E. S. Castle's credit—thinks it was the Sowerby judgment.

The defendants also produced as a witness Orrin J. Rose, who, being duly sworn, testified, in substance, that, in August, 1855, he received from Wheelock & Daniels, of New York, a consignment of about $3,000 worth of boots and shoes for E. S. Castle, to be held by witness subject to their order; that about 15th August, Mr. Fonda, the attorney and agent of Wheelock & Daniels, consulted with witness as to the value of a letter of credit in favor of E. S. Castle, dated 15th August, 1855, to the extent of $3,000, and signed by E. H. Castle and his wife; that witness told said Fonda the instrument was not of that value, unless it was endorsed by Joseph Filkins; that the same letter of credit was, on the 22d August, 1855, endorsed and guaranteed by said Joseph Filkins, at New York; and that, on the same day, witness received an order from his consignors, by telegraph, to deliver said goods to E. S. Castle, which he accordingly did; that E. S. Castle gave to Wheelock & Daniels eight notes for said goods, dated 22d August, 1855, and falling due, respectively, at 3, 4, 5, 6, 7, 8, 9, and 10 months, each for $371 29, and each endorsed by E. H. Castle; that, in the winter of 1856, Joseph Filkins paid Wheelock and Daniels nearly $3,000 on the above guarantee, by a draft on Elston & Co., payable in three years.

Defendants here produced and read in evidence a letter of credit in the words and figures following, viz:

CHICAGO, *Aug't* 14, 1855.

Messrs. Wheelock & Daniels:

GENT.: We, the undersigned, do hereby become responsible

for Mr. E. S. Castle, of this city, in the sum or sums to the amount of three thousand dollars, for goods purchased, or which he may hereafter purchase, of your house, for the period of one year from this date; that his bills shall be paid within six months after maturity; and we shall entertain the hope that the agreement made a few days ago will be complied with. We hand you this letter of credit instead of the trust deed which was proposed to be given to your Mr. Daniels.

Very respectfully, yours,

E. H. CASTLE,
EMELINE CASTLE.

We take pleasure in certifying that the responsibility of the above guarantee is beyond question, and good for at least ten times the amount.

FILKINS, RUNYON, & BARKER.

Chicago, Aug't 14, 1855.

I, Joseph Filkins, of the city of Chicago, Ills., do hereby, for value received, promise, agree, and guarantee, to and with Wheelock & Daniels, of the city of New York, that the above letter of credit, signed E. H. Castle and Emeline Castle, shall in all things be carried out and complied with on the part of the said E. H. Castle and Emeline Castle, and prompt payment made at the time and in the manner therein specified.

Dated New York, Aug't 22, 1855.

JOS. FILKINS.

Also six promissory notes of E. S. Castle to Wheelock & Daniels, for $371 29 each, of which the following are copies, viz., all endorsed by E. H. Castle:

$371 29. NEW YORK, *August* 22*d*, 1855.

Five months after date, I promise to pay to the order of Wheelock & Daniels three hundred seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills., value received, with current rate of exchange.

E. S. CASTLE.

$371 $\frac{29}{100}$. NEW YORK, *Aug't* 22*d*, 1855.

Six months after date, I promise to pay to the order of Wheelock & Daniels three hundred seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills.

E. S. CASTLE.

$371 $\frac{29}{100}$. NEW YORK, *Aug't* 22*d*, 1855.

Seven months after date, I promise to pay to the order of Wheelock & Daniels three hundred and seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills.

E. S. CASTLE.

$371 $\frac{29}{100}$. NEW YORK, *Aug't* 22*d*, 1855.

Eight months after date, I promise to pay to the order of Wheelock & Daniels three hundred seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills.

E. S. CASTLE.

$371 $\frac{29}{100}$. NEW YORK, *Aug't* 22*d*, 1855.

Nine months after date, I promise to pay to the order of Wheelock & Daniels three hundred and seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills.

E. S. CASTLE.

$371 $\frac{29}{100}$. NEW YORK, *Aug't* 22*d*, 1855.

Ten months after date, I promise to pay to the order of Wheelock & Daniels three hundred seventy-one $\frac{29}{100}$ dollars, at the Commercial Bank, Chicago, Ills.

E. S. CASTLE.

Defendants also produced and read in evidence to the jury three promissory notes of E. S. Castle, for $397 69 each, dated Dec. 1st, 1855, and payable to his own order, and endorsed by him, of which the following are copies, viz:

$397 69 CHICAGO, *Dec.* 1*st*, 1855.

Five months after date, I promise to pay to the order of myself three hundred ninety-seven $\frac{69}{100}$ dollars, value received.

E. S. CASTLE.

Endorsed: "E. S. Castle."

$397 69. CHICAGO, *Dec.* 1*st*, 1855.

Six months after date, I promise to pay to the order of myself three hundred ninety-seven $\frac{69}{100}$ dollars, value received.

E. S. CASTLE.

Endorsed: "E. S. Castle."

$397 69. CHICAGO, *Dec.* 1*st*, 1855.

Seven months after date, I promise to pay to the order of myself three hundred ninety-seven $\frac{69}{100}$ dollars.

E. S. CASTLE.

Endorsed: "E. S. Castle."

Defendants also produced and read in evidence a promissory note for $121 81 of E. S. Castle, dated Dec. 20, 1855, of which the following is a copy, viz:

$121 $\frac{81}{100}$. CHICAGO, *Dec.* 20, 1855.

Four months after date I promise to pay to the order of Filkins, Runyon & Barker one hundred twenty-one $\frac{81}{100}$ dollars at the Bank of Commerce, Chicago, Ills.

E. S. CASTLE.

Defendants also produced and read in evidence two drafts, one dated Dec. 20th, 1855, and one dated Jan. 3d, 1856, drawn by E. S. Castle upon John D. Parks, and payable to Filkins, Runyon & Barker, and endorsed by Filkins, Runyon & Barker, and duly protested for non-payment, one at 12 days after date for $750, and one at 20 days after date for $300, of which the following are copies, viz:

$750. CHICAGO, ILL'S, *Dec.* 20, 1855.

Twelve days after date please pay to the order of Filkins, Runyon & Barker seven hundred and fifty dollars, and charge same to,

Yours truly,
E. S. CASTLE.

To Mr. JNO. D. PARKS,
Dubuque, Iowa.

$300. CHICAGO, *January* 3*d*, 1856.

Twenty days after date please pay Filkins, Runyon & Barker three hundred dollars, and charge the same to,

Yours, &c.,
E. S. CASTLE.

To Mr. JNO. D. PARKS,
Dubuque, Iowa.

Defendants also produced as a witness A. B. Hayward, who, being duly sworn, testified, in substance, that he was a builder in Chicago, and was acquainted with E. S. Castle and his circumstances in the fall of 1855; that he did business with him at that time; was in his store often. He don't know as to others, but he would have given him all the credit he wanted—to the extent of $4,000 at least; that witness knew that E. S. Castle had then three houses on Milwaukee avenue with tenants in them, and also 60 milch cows at Holstein. Witness also stated that he knew the time when Phillips became a partner in the firm of Filkins, Phillips & Co.; it was about the 1st of November, 1855—can't tell the exact day.

Defendants then produced as a witness Clark Runyon, who, being duly sworn, testified, in substance, that he knew the standing of E. S. Castle in the fall of 1855—it was good; that he had from 60 to 70 cows; that he knew of his having a lease of real estate; that witness first heard of his failure of credit in the winter of 1855–'6; that he sold E. S. Castle goods in September, 1855—$40 or $50; that witness is the father of Israel Runyon, of the firm of Filkins, Runyon & Barker; that he thinks E. S. Castle quit the dairy business in the spring of 1855; witness was dealing in hardware, and in September, 1855, asked his son if the credit of E. S. Castle was still good, and he said it was; that witness would have sold to E. S. Castle, on credit at 90 days, in his business, from $300 to $500. He judged from what his son told him.

Defendants here read in evidence note to Peters & Co. for $476 $\frac{76}{100}$, in the words and figures following, to wit:

$476 76. CHICAGO, *April 2d*, 1855.

Twelve months after date we promise to pay to the order of H. N. Peters & Co., at the Exchange Bank in Chicago, four hundred and seventy-six $\frac{76}{100}$ dollars, value received, with interest from date.

E. S. CASTLE.

Endorsed: "E. H. Castle."

Guaranteed by Joseph Filkins in these words:

For a valuable consideration to me paid, I hereby guarantee the prompt payment, at maturity, of two notes, dated Chicago, April 2d, 1855, for $476 76 each, one at six months and the other at twelve months, to the order of H. N. Peters & Co., and executed by E. S. Castle and E. H. Castle.

Chicago, June 1, '55.

(Signed) JOS. FILKINS.

W. F. V. PITNEY.

And in the same connection read in evidence the execution in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Northern District of Illinois, ss.

The United States of America to the Marshal of the northern district of Illinois, greeting:

We command you, that of the goods and chattels, lands and tenements of Joseph Filkins and Edward H. Castle, in your district, you cause to be made five hundred and forty-four dollars and thirty-six cents, which Horace N. Peters and Albert H. Woodruff, surviving partners of James C. Ogden, lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof at Chicago, in the district aforesaid, recovered against them for the damages which they had sustained, as well by occasion of the non-performance of certain promises and undertakings, as for their costs and charges by them about their suit in this behalf expended, whereof said defendants are convicted, as appears to us of record. And have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiffs for their damages aforesaid, and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 28th day of August, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the 81st year.

[L. S.]

WM. H. BRADLEY, *Clerk.*

Endorsed: This execution came to hand this 28th day of Augt., 1856, at 6 o'clock p. m.

I. NYE,
U. S. Marshal.

Made the amount of debt and all costs in the within case, and paid to Mr. Bradley, clerk, all but my own fees, this 27th day of Oct., 1856.

IRAM NYE,
U. S. M.

And also a receipt of the United States marshal, in the words and figures following:

565 84.

Rec'd, Chicago, Oct. 24th, 1856, of Joseph Filkins, a check on Daniel Elston & Co. for five hundred and sixty-five $\frac{84}{100}$ dollars, which, when paid, is in full satisfaction of an execution in my hands, from the U. States circuit court for the northern district of Illinois, in favor of Horace N. Peters and Albert H. Woodruff, surviving partners of Jas. C. Ogden, and against Joseph Filkins and Edward H. Castle.

Debt and int.....	$552 53
Marshal's cost.....	13 31
	565 84

IRAM NYE,
U. S. Marshal, Nor. Dt. Ill.

And the defendants also produced as a witness Elias Shipman, who being duly sworn, testified, in substance, that he was employed in the office of city superintendent for Chicago; that he was in the habit of calling at the store-rooms of Filkins, Phillips & Company, at 100 Randolph street, from October, 1855, to January, 1856; that he recollects being there in the beginning of November, 1855, when Bullard was there; that witness was there introduced by E. H. Castle to plaintiff; saw Boyington, Phillips and others there. Witness saw there a lot of ready-made clothing, and asked E. H. Castle to sell him a coat, to which E. H. Castle replied that they were not on sale; that they belonged to Mr. Bullard, and he was about to sell or had sold them to E. S. Castle; that witness was in the store some time, and whilst there he heard plaintiff apply to E. H. Castle and to Phillips to endorse or guarantee E. S. Castle's notes, saying he would pay them for it. They each declined. Phillips said to Bullard that the firm had nothing to do with the sale, and would have nothing to do with the paper; it was E. H. Castle's matter. Bullard said he would see Castle paid for his trouble. Phillips said the firm could have sold them for cash at

auction. Bullard said he preferred to sell them himself at private sale; they would bring more. Phillips seemed displeased; his manner indicated displeasure; witness did not know what it was about. On cross-examination witness further testified, that this occurred before dinner. Witness was in the store; that witness did not go back into the office, that he knows of; that there were several persons present, but that witness was then a stranger in the city, and did not know who they were; does not know that he saw Parks, or Charles H. Castle, or Webster; they might or might not have been present; he knew Mr. Palmer, the clerk, E. H. Castle, Phillips, and plaintiff, and saw them there; does not distinctly recollect any others, although he has an indistinct recollection that there were a good many there. Witness did not see any papers signed, or any examination of the goods; did not see E. S. Castle there. Witness shortly afterwards went to the post office, and did not pay any more attention to the matter. Granger's wife is witness's sister, and a widow of E. H. Castle's brother; there is some connection by marriage between Parks and E. H. Castle, as witness understood.

And the defendants also produced as a witness Richard S. Hicks, who being duly sworn, testified in substance, that he entered the service of Phillips, Filkins & Co. early in November, 1855; Phillips was connected with the concern before he went there; witness's business was as an outside man; that when he went to 100 Randolph street he saw a lot of ready-made clothing. E. H. Castle said it belonged to Bullard. Witness proposed to buy a suit of it; Castle said the goods were not on sale.

Plaintiff here objected that these declarations of E. H. Castle as to whose goods they were, and whether they were for sale, were incompetent.

Defendants then asked witness whether E. H. Castle had the goods in possession at the time he made said declarations. Witness answered that he had.

The court then sustained said objection of plaintiff, and excluded said declarations from being in proof.

To which decision of the court defendants each then and there excepted.

Witness further testified, that a few days after this he saw plaintiff there, and E. S. Castle. That E. S. Castle bought the goods, and at the time of the sale plaintiff was there doing the writing. The firm had nothing to do with the goods. That witness is now engaged in the insurance business. That John D. Parks came from Dubuque here in Nov., 1855, and had been before that in charge of E. S. Castle's store there.

On cross-examination witness said he was in till 9 in the morning, and then left the store, went to the north side of the river, and did not return till nearly noon; did not see any papers signed, or any goods packed, or any one compare the goods with the bill;

his best recollection was, that John D. Parks came from Dubuque in Dec'r, 1855, and his attention first called to this case, and the facts about them, weeks ago by Judge Dickey, the defendant's counsel; did not then know Charles H. Castle, or C. R. Parks, or the Websters; knows them since, and has no recollection of seeing them there at any time on the occasion alluded to by him.

The E. S. Castle spoken of and mentioned in this bill of exceptions is Edmund S. Castle; and Filkins, of Filkins, Runyan & Barker, is Joseph Filkins, one of the defendants.

Defendants here rested their case.

Plaintiff then read in evidence to the jury a letter from E. H. Castle to the plaintiff, with a business card printed at the top of it, to the reading of which, when offered, defendants each objected, that it was irrelevant and incompetent, and not rebutting. The court, however, overruled the objections, and permitted the same to be read in evidence to the jury, to which decision of the court defendants each then and there excepted.

The following is a copy of said card and said letter:

(*Card.*)

E. H. Castle. Elihu Granger. Joseph Filkins.

CASTLE, GRANGER & FILKINS,

Real Estate Brokers, Auction and Commission Merchants, No. 100 Randolph street.

Moneys advanced on Consignments, Loans Negotiated, Collections for Eastern Cities promptly attended to. Taxes Paid, Titles Examined, etc., etc.

References.

Homer Ramsdell, Esq., New York.
Messrs. Boyd, Wilkins & Co., New York.
W. H. Burroughs, Esq., New York.
Erastus Corning, Esq., Albany, N. Y.
Dr. L. A. Herrick, Albany, N. Y.
M. L. Filkins, Esq., " "
Tappin, McBurney & Cheever, Boston.
Hon. Edward Herrick, Athens, P. A.
Gov. J. A. Matteson, Springfield, Ill.
Maj. B. F. Fifield, St. Louis, Mo.
Edward Keating, Esq., Alton, Ill.
Captain Van Allen, Buffalo, N. Y.
H. Martin, Esq., " "
Hon. Wm. Jackson, New Orleans, La.
Walter Peck, Esq., " " "

(*Letter.*)

CHICAGO, *Sept. 20th*, 1855.

E. F. BULLARD, Esq.:

DEAR SIR: Our friend, W. H. Adams, just called and showed me a letter and bill clothing, amounting some twenty-six hundred dollars, which you would sell on six and twelve months, with good security, and make a twenty per cent. discount. I told Adams he might send the boxes up to our house and see what could be done. I would say that a party has left two hundred and fifty acres of land in Fulton co., this State, for sale or trade for goods, at ten dollars per acre. It will average one half timber, and undoubtedly will go up in ten years to fifty dollars per acre. I could probably get the two hundred and fifty acres of land for your bill of clothing, saying not anything about the discount. Please write by return mail and say what you would do and like to do, and we will endeavor to carry out your views. Please tell us all about the wife, your health, and the great cause we love so well—how is it getting along?

We are all quite well, having had a pleasant and healthy summer. Business fair; money rather tight.

From yours truly, E. H. CASTLE.

The plaintiff then recalled the witness Boyington, who testified, in substance, that he knew Charles Castle, the son of E. H. Castle; that he is positive he was not present 100 Randolph street at the time of the sale; that witness heard nothing of Phillips saying the firm had nothing to do with the transaction; that E. H. Castle said if it was his individual affair, he would not have charged Bullard anything; but as it was a firm matter, he would have to charge that amount. That during all the time, on the 8th November, when witness was there, there were no other persons in the store than those he has named. At any rate, he did not recollect any others, though there might have been some persons coming in and going out during that time.

Plaintiff then called as a witness George W. Grubb, who being duly sworn, testified, in substance, that the price for selling at auction was 5 per cent.

And the defendant produced as a witness Nicholas P. Iglehart, who being duly sworn, testified, in substance, that he has resided in Chicago many years; that he was in the constant habit of passing the store at 100 Randolph street in the fall and winter of 1855–'6, regularly from four to six times a day; that he dropped in there frequently. It was an auction store and place of general resort. That generally there were many people in and out of that store, and that in business hours it was a rare case when there was not quite a number of persons there.

The foregoing was substantially the evidence given to the jury; the above being the substance of all the evidence which is material to the questions of law decided by the court in the case.

The court, after saying to the jury that the original and amended declaration alleged in substance that the defendants fraudulently sold the goods for plaintiff to an irresponsible person, and also that, in consequence of false and fraudulent representations made by them, the plaintiff consented to the negotiation and sale by them of the goods to an insolvent person, by which plaintiff sustained loss, and that one of these allegations must be proved, among various other instructions gave the following to the jury:

1st. If the goods were in the custody of the defendants for sale on commission, and one or more of the partners made false and fraudulent representations as to the party to whom they were to be sold by the defendants, then the partnership would be liable, if in consequence of such representations the plaintiff consented to the sale to that party, and the sale was actually made by the firm to the party.

2d. If, however, these goods were not in the possession of the defendants for sale, but were there merely for safe-keeping, and one or more of the partners made false and fraudulent representations as to the solvency of a person to whom it was proposed to sell the goods, and in consequence of such representations the goods were sold and delivered to that person by the plaintiff, or he consented to their sale, then the firm is not liable for such false and fraudulent representations unless the firm, as a firm, were party to such representations. That the false or fraudulent representations made by one of several partners, in order to bind the firm, must be made in the course of, and in relation to, the business of the firm.

3d. If the sale was made by the plaintiff alone, or by the plaintiff through E. H. Castle as his agent, (acting in that behalf, and not for the firm,) then no matter what were the representations by E. H. Castle, the jury must find for the defendants.

4th. Unless the sale was made or negotiated by the firm, the jury should find for the defendants.

5th. That the fact of a guaranty of the payment of a debt by Filkins is not evidence of fraud, nor of want of solvency at that time. There is no presumption that the return of the officer is untrue.

6th. That so far as the motives of the defendants are concerned, no fact proved is to be considered, unless the knowledge of such fact is brought home to such defendants.

7th. That all the subsequent transactions mentioned by the witnesses have nothing to do with the main fact of the case, further than this: they are only circumstances to be considered which may throw light upon the motives of the parties; that if the subsequent acts and declarations can be accounted for reasonably without as-

suming a fraudulent motive in the transaction of the 8th November, such circumstances are not to be considered or regarded by the jury as entitled to any weight. And they are to have no influence until the jury are satisfied, from the evidence, that the sale was made by or through the defendants, as commission merchants; that E. S. Castle was not responsible as a purchaser on the 8th of November, the time of sale, and that the defendants knew him to be irresponsible.

8th. That unless the jury believe that defendants acted fraudulently, as charged in this declaration, it is entirely immaterial whether they, or any of them, acted fraudulently or otherwise in after transactions, or other transactions.

9th. That fraud could never be presumed, but must be clearly proved, but it may be established circumstantially as well as by direct proof.

To the first and second instructions, as above stated, the defendants then and there excepted, but to none others; the other instructions above set forth being given to the jury at the request of the counsel for the defendants.

The court also said to the jury that all the instructions given by the court were to be taken and considered together.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed as of the adjourned October term, 1857, to wit, December 16th, 1857.

WM. H. BRADLEY, *Clerk.*

The following is a correct copy of the citation issued to the defendant in the appeal in said entitled cause, to wit:

Citation.

UNITED STATES OF AMERICA, *ss.*

To Edward F. Bullard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 1st Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and the northern district of Illinois, wherein Edward H. Castle, Elihu Granger, and J. P. Phillips are plaintiffs, and you are defendant in error, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

[L. S.] Witness the Honorable Thomas Drummond this 11th day of December, A. D. 1857.

THOMAS DRUMMOND.